SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1948

No.

ROY COLE AND LOUIS JONES, PETITIONERS,

vs.

STATE OF ARKANSAS

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ARKANSAS

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[fol. 1]

IN THE PULASKI CIRCUIT COURT, FIRST DIVISION

STATE OF ARKANSAS, Plaintiff,

vs.

ROY COLE (CM), LOUIS JONES (CM), JESSIE BEAN (CM),
Defendants

FELONY INFORMATION—February 7, 1946

Comes Sam Robinson, Prosecuting Attorney within and for Pulaski County, Arkansas, and in the name, by the authority, and on behalf of the State of Arkansas information gives accusing Roy Cole, Louis Jones and Jessie Bean of the crime of felony, committed as follows to-wit: On the 26th day of December, A. D. 1945, in Pulaski County, Arkansas, Walter Ted Campbell, acting in concert with other persons, assembled at the Southern Cotton Oil Company's plant in Pulaski County, Arkansas, where a labor dispute existed, and by force and violence prevented Otha Williams from engaging in a lawful vocation. The said Roy Cole, Louis Jones and Jessie Bean, in the County and State aforesaid, on the 26th day of December, 1945, did unlawfully and feloniously, acting in concert with eath other, promote, encourage and aid such unlawful assemblage, against the peace and dignity of the State of Arkansas.

Sam Robinson, Prosecuting Attorney.

Subscribed and sworn to before me on this 7th day of Nov., 1946. Tom Newton, Circuit Clerk, by H. E. Cape, Deputy Circuit Clerk.

Issue Bench Warrant and require bail in the sum of — Dollars.

—— ——, Judge.

[File endorsement omitted.]

Bail Bonds for $1000.00 approved and filed Nov. 12, 1946 omitted in printing.

[fol. 2] IN CIRCUIT COURT OF PULASKI COUNTY

[Title omitted]

MOTION AS TO PRIOR INDICTMENTS—Filed January 22, 1947

Comes the defendants and respectfully move the Court to direct the clerk of this Court to submit the record of the trial in this cause by inserting therein, the Indictments against the defendants in case No. 46482, which Indictment was quashed by order of this Court, on the 21st day of November, 1946, as shown in the judgment records of said Court, in Vol. 41, Page 208.

Respectfully submitted, Ross Robley & Elmer Schoggen, Attorneys for defendants.

[File endorsement omitted.]

IN CIRCUIT COURT OF PULASKI COUNTY

[Title omitted]

ORDER QUASHING PRIOR INDICTMENTS—November 21, 1946

This day comes the State of Arkansas by Sam Robinson, Prosecuting Attorney, and comes the defendants by their attorney Ross Robley, and the Court on its own motion, in view of the identity of alleged offenses in case Number 46994 and 46482, this case is quashed.

It is therefore considered, ordered and adjudged by the Court that each of said defendants go hence discharged hereof as to case Number 46482, and that Pulaski County pay all costs of this prosecution.

IN CIRCUIT COURT OF PULASKI COUNTY

[Title omitted]

ORDER OVERRULING DEMURRER—November 25, 1946

This day comes the defendants by their Attorney Elmer Schoggen, and by leave of Court files a demurrer to the Information filed herein, which is presented to the Court;

[fol. 3] and the Court being well and sufficiently advised, doth overrule the demurrer. To which action of the Court in overruling the demurrer the defendants save their exceptions.

In Circuit Court of Pulaski County

[Title omitted]

Demurrer—Filed November 25, 1946

Comes the defendants and states that the information filed against them is so indefinite and uncertain that it does not state a cause of action against the defendants cognizable under the law of the State of Arkansas or of the United States.

Wherefore, defendants pray that the information against them be quashed, set aside and held for naught.

Ross Robley & Elmer Schoggen.

Duly sworn to by Elmer Schoggen. Jurat omitted in printing.

In Circuit Court of Pulaski County

[Title omitted]

Denial of Plea of Former Acquittal—November 25, 1946

This day comes the defendants by their attorney Elmer Schoggen, and by leave of Court files a plea of former acquittal to the information filed herein, which is presented to the Court; and the Court being well and sufficiently advised, doth overrule said plea; to which action of the Court in overruling said plea, the defendants save their exceptions.

In Circuit Court of Pulaski County

[Title omitted]

Plea of Former Acquittal—Filed November 25, 1946

Comes the defendants and plead that on March 18th, they were found guilty under an indictment charging the same [fol. 4] offense as contained the present information. They state that on appeal to the Supreme Court of the State of Arkansas the judgment of the conviction was reversed and that, thereafter this Court quashed the indictment in said cases.

Defendants state that the present information filed by the Prosecuting Attorney, is as to the same act upon which these defendants were prosecuted and the charge against them dismissed.

Wherefore, these defendants plead that they have already been in jeoparty, and pray further that the information be quashed, set aside and held for naught.

Ross Robley and Elmer Schoggen.

Duly sworn to by Elmer Schoggen. Jurat omitted in printing.

In Circuit Court of Pulaski County

[Title omitted]

Order Overruling Motion to Quash—November 25, 1946

This day comes the defendants by their attorney Elmer Schoggen, and by leave of Court files a motion to quash Information filed herein, which is presented to the Court; and the Court being well and sufficiently advised on said motion, doth overrule said motion. To which action of the Court in overruling said motion the defendants save their exceptions.

In Circuit Court of Pulaski County

[Title omitted]

Motion to Quash Information—Filed November 25, 1946

Comes the defendants and state that the Act No. 193 of the General Assembly of 1943 under which defendants are indicted herein is in violation of the Constitution of the State of Arkansas and of the United States of America, in that the said act undertakes to make a felony of acts that would under other circumstances be a misdemeanor.

[fol. 5] Whereupon, defendants pray that said information be quashed, set aside and held for naught.

Ross Robley & Elmer Schoggen.

Duly sworn to by Elmer Schoggen. Jurat omitted in printing.

IN CIRCUIT COURT OF PULASKI COUNTY

[Title omitted]

Minute Entry Re Trial and Convictions

This day comes the State of Arkansas by Sam Robinson, Prosecuting Attorney, and comes the defendants in proper person, and by their attorneys Ross Robley and Elmer Schoggen, and parties announce ready for trial, defendants each waive arraignment and formal drawing of a jury, and each enter their plea of not guilty, and by agreement are tried together; thereupon comes twelve qualified electors of Pulaski County, viz: W. D. Billingsley, Ralph Hill, R. E. Herndon, Roy Pritchett, Harry Schmuck, George Boshears, George Lewis, Lee Hardcastle, J. B. Davenport, W. W. Finch, E. R. Young and W. S. Dabbs, who being duly selected, are duly accepted, empaneled and sworn as a trial jury in this case; and after hearing the testimony to be adduced, the instructions of the Court and the argument of Counsel the jury retires to consider of arriving at a verdict. And after a deliberation thereon return into Court with the following verdict against each defendant. We the jury find the defendant Roy Cole, Louis J. Jones and Jessie Bean guilty of a felony as charged in the Information, and leave the punishment to the Court.

George Lewis, Foreman.

Thereupon the jury is discharged from the case, and the defendants are each released upon their present bond, and are given Twenty (20) days in which to file a motion for new trial in the case.

[fol. 6] IN CIRCUIT COURT OF PULASKI COUNTY

[Title omitted]

ORDER EXTENDING TIME TO FILE MOTION FOR NEW TRIAL—December 12, 1946

This day comes the defendants by their attorney Elmer Schoggen, and at his request the Court doth grant an additional fifteen days in which to file a motion for new trial.

IN CIRCUIT COURT OF PULASKI COUNTY

[Title omitted]

MOTION AND ORDER RE PRIOR INDICTMENT—January 22, 1947

This day comes the defendants by their attorney Elmer Schoggen, and by leave of court files a motion to insert in transcript a copy of the Indictment Number 46482, which was quashed on November 21st, 1946. Which motion is by the court granted.

IN CIRCUIT COURT OF PULASKI COUNTY

[Title omitted]

PRIOR INDICTMENT—Filed January 24, 1946

The Grand Jury of Pulaski County in the name and by the authority of the State of Arkansas, accused Roy Cole, Louis Jones and Jessie Bean of the crime of felony, committed as follows, to-wit: The said Roy Cole, Louis Jones and Jessie Bean, in the County and State aforesaid, on the 26th day of December, A. D. 1945, did then and there wilfully, unlawfully and feloniously, by the use of force and violence, prevent Otha Williams from engaging in work as a laborer at the Southern Cotton Oil Company, said work being a lawful vocation, contrary to the statute in such cases made and provided, and against the peace and dignity of the State of Arkansas.

Sam Robinson, Prosecuting Attorney.

Witnesses: Otha Williams, Willie Johnson, Willie Brown.

[fol. 7] [Endorsed:] No. 46482. State of Arkansas, vs. Roy Cole, Louis Jones, Jessie Bean. A True Bill. C. M. Burrow, Foreman. Indictment for Felony. Filed in open Court in the presence of all the Grand Jurors, this 4th day of January, 1946. Tom Newton, Clerk, by H. E. Cape, D. C.

[File endorsement omitted.]

IN CIRCUIT COURT OF PULASKI COUNTY

[Title omitted]

MOTION FOR NEW TRIAL—Filed December 28, 1946

Comes the defendants and respectfully prays the Court to grant them a new trial in this cause for the following reasons:

1. Because the verdict of the jury rendered on November 25, 1946, is contrary to the law.

2. The verdict is contrary to the evidence.

3. The verdict is contrary to both the law and the evidence.

4. The court erred in overruling the prayer of the defendants for former acquittal.

5. The court erred in overruling the motion of the defendants to quash the information against them on the grounds that Act No. 193 of the General Assembly of Arkansas of 1943, is in violation of the constitution of the State of Arkansas, and the constitution of the United States.

6. The court erred in overruling the demurrer of the defendants to the information filed against them by the Prosecuting attorney, to the overruling of which motions and demurrer the defendants, at the time, objected and saved their exceptions.

7. The court erred in permitting the Prosecuting Attorney, over the objections and exceptions of the defendants, to cross-examine the State's witness, Willie Johnson, to prove by him that he saw Robert Brooks at the scene of the fight, when Robert Brooks was not on trial.

[fol. 8] 8. The court erred in permitting the State to prove by the witness, Elvie Washington, that someone, unknown to the witness, made an attack on Otha Williams.

9. The court erred in permitting witness Willie Brown to testify over the objections and exceptions of the defendants, that one Campbell made an attack on Otha Williams.

10. The court erred in ruling that the testimony of Willie Brown sufficiently identified Campbell as the man alluded to by the witness, Washington, over the objection and exceptions of the defendants.

11. The court erred in overruling the motion of the defendants for a directed verdict of not guilty, at the close of the evidence on behalf of the State, over the objection and exceptions of the defendants.

12. The court erred in excluding from the jury, the testimony of Roy Cole, that Witness Willie Brown kept guns in his locker, over the objection and exceptions of the defendants.

13. The court erred in overruling the motion of the defendants for an instructed verdict of not guilty at the close of all the evidence in the case, over the objection and exceptions of the defendants.

14. The court erred in giving the State's prayer for instruction No. 1, over the general and specific objection of the defendants.

15. The court erred in giving the State's prayer for instruction No. 2, over the objection and exceptions of the defendants.

16. The court erred in refusing to give to the jury, the prayer of the defendants for instruction No. 11, to which action of the court, the defendants objected and saved their exceptions.

Wherefore, defendants pray that the verdict of the jury in these cases be set aside and that they be granted a new trial.

Respectfully submitted, Ross Robley, Elmer Schoggen, Attorneys for Defendants.

[fol. 9] IN CIRCUIT COURT OF PULASKI COUNTY

[Title omitted]

ORDER GRANTING MOTION TO SUPPLEMENT RECORD—December 31, 1946

This day comes the defendants by their attorney, Elmer Schoggen, and by leave of court files a motion to supplement record in this case, which motion is presented to the court, and is by the court granted.

IN CIRCUIT COURT OF PULASKI COUNTY

[Title omitted]

MOTION TO SUPPLEMENT RECORD—Filed December 31, 1946

Comes the defendants and respectfully move the court to direct the clerk of this Court to supplement the record of the trial in this cause by inserting therein the order of this Court made in case No. 46482, on November 21, 1946, in which case, the State of Arkansas was plaintiff and these defendants were defendants therein, by which order this Court, on its own motion, quashed the indictment and further proceedings in case No. 46482, against these defendants. This order is entered of record in the judgment records of this Court, Volume 41, page 208.

Respectfully submitted, Ross Robley and Elmer Schoggen, Attorneys for Defendants.

[File endorsement omitted.]

IN CIRCUIT COURT OF PULASKI COUNTY

[Title omitted]

ORDER OVERRULING MOTION FOR NEW TRIAL—December 31, 1946

This day comes the State of Arkansas by Thomas E. Downie, Assistant Prosecuting Attorney, and comes the defendants by their attorneys, Ross Robley and Elmer [fol. 10] Schoggen, and the motion for new trial heretofore filed is presented to the court; and after hearing the argument both for the State and for the defendants, the Court doth overrule said motion. To which action of the Court, in overruling said motion the defendants save their exceptions, and prays and appeal to the Supreme Court, which is by the Court granted, and defendants are given Five (5) days in which to file their Bill of Exceptions, and the appeal bonds are each fixed at Fifteen Hundred ($1500.-00) dollars.

IN CIRCUIT COURT OF PULASKI COUNTY

46994

Felony

STATE OF ARKANSAS

VS.

ROY COLE

JUDGMENT RE COLE

This day comes the State of Arkansas by Thomas E. Downie, Assistant Prosecuting Attorney, and comes the defendant in proper person, and by his attorneys, Ross Robley and Elmer Schoggen, and defendant is called to the bar of the Court, and informed of the nature of the Information filed herein, his plea thereto, and the verdict of the jury thereon finding him guilty as charged in the Information, and leaving the punishment to the Court. And the defendant being now before the Court for judgment, says nother further whereupon the Court doth assess his punishment as a sentence of One (1) year imprisonment in the State Penitentiary.

It is therefore considered, ordered and adjudged by the Court that said defendant be remanded into the custody of the Sheriff of Pulaski County, and to be by him safely and speedily transported to the Penitentiary House or State Confict Farm or Camps of the State of Arkansas, and there confined at hard labor for the period of One (1) year, and that the State of Arkansas do have and recover of said defendant all the costs of this prosecution and have execution [fol. 11] therefor. It is further ordered by the Court that the clerk of this court make out and deliver to said Sheriff a certified copy of the foregoing judgment, to be by him delivered to the Agent or Keeper of said Penitentiary as sufficient authority for him to receive and confine the said Roy Cole in the manner aforesaid.

IN CIRCUIT COURT OF PULASKI COUNTY

46994

Felony

STATE OF ARKANSAS

vs.

LOUIS JONES

JUDGMENT RE JONES—December 31, 1946

This day comes the State of Arkansas by Thomas E. Downie, Assistant Prosecuting Attorney, and comes the defendant in proper person, and by his attorneys, Ross Robley and Elmer Schoggen, and defendant is called to the bar of the Court, and informed of the nature of the information filed herein, his plea thereto, and the verdict of the jury thereon finding him guilty as charged in the Information, and leaving the punishment to the Court; and the defendant being now before the Court for Judgment, says nothing further, Whereupon the Court doth assess his punishment at a sentence of One (1) year imprisonment in the State Penitentiary.

It is therefore considered, ordered and adjudged by the Court that said defendant be remanded into the custody of the Sheriff of Pulaski County, and to be by him safely and speedily transported to the Penitentiary House or State Convict Farm or Camps of the State of Arkansas, and there confined at hard labor for the period of One (1) year, and that the State of Arkansas do have and recover of said defendant all the costs of this prosecution and have execution therefore. It is further ordered by the Court that the clerk of this Court make out and deliver to said Sheriff a certified copy of the foregoing judgment to be by him delivered to the Agent or Keeper of said Penitentiary as sufficient authority for him to receive and confine the said Louis Jones in the manner aforesaid.

[fol. 12] IN CIRCUIT COURT OF PULASKI COUNTY

46994

Felony

STATE OF ARKANSAS

vs.

JESSIE BEAN

JUDGMENT RE BEAN—December 31, 1946

This day comes the State of Arkansas by Thomas E. Downie, Assistant Prosecuting Attorney, and comes the defendant in proper person, and by his attorneys, Ross Robley and Elmer Schoggen, and defendant is called to the bar of the Court, and informed of the nature of the Information filed herein, his plea thereto, and the verdict of the jury thereon finding him guilty as charged in the Information, and leaving the punishment to the Court; and the defendant being now before the Court for judgment, says nothing further. Whereupon the Court doth assess his punishment at a sentence of One (1) year imprisonment in the State Penitentiary.

It is therefore considered, ordered and adjudged by the Court that said defendant be remanded into the custody of the Sheriff of Pulaski County, and to be by him safely and speedily transported to the Penitentiary House or State Convict Farm or Camps of the State of Arkansas, and there confined at hard labor for the pe-iod of One (1) year, and that the State of Arkansas do have and recover of said defendant all the costs of this prosecution and have execution therefor. It is further ordered by the Court that the clerk of this Court make out and deliver to said Sheriff a certified copy of the foregoing judgment to be by him delivered to the Agent or Keeper of said Penitentiary as sufficient authority for his to receive and confine the said Jessie Bean in the manner aforesaid.

Bonds on Appeal for $1500 Approved and filed Dec. 31, 1946, omitted in printing.

[fol. 13] IN CIRCUIT COURT OF PULASKI COUNTY

[Title omitted]

ORDER RE APPROVING, SIGNING AND FILING BILL OF EXCEPTIONS —January 2, 1947

This day comes the defendants by their attorney Elmer Schoggen, and presents their Bill of Exceptions herein, which being duly examined, is approved and signed by the Judge, and is ordered filed and made a part of the record in this case.

IN CIRCUIT COURT OF PULASKI COUNTY

[Title omitted]

BILL OF EXCEPTIONS

Be It Remembered that on this 25th day of November, 1946, the same being a day of the regular September 1946 term of the Pulaski Circuit Court, First Division, before the Honorable Gus Fulk, Judge of said Court, present and presiding, this cause came on to be heard, the State being represented by Mr. Sam Robinson, the Prosecuting Attorney, and Mr. Thomas E. Downie, Deputy Prosecuting Attorney, its attorneys, the defendants being represented by Mr. Elmer Schoggen and Mr. Ross Robley, their attorneys, and both parties announcing ready, thereupon the following proceedings were had and done, objections made, exceptions saved, etc., to-wit:

The Court: Do you waive arraignment and formal drawing of the jury and plead not guilty?

Mr. Schoggen: We do, your Honor.

• • • • • • •

The Court: Gentlemen, is there anything further to be said about the members of the jury selected for this trial?

Mr. Robinson: The jury is satisfactory for the State, may it please the court.

Mr. Schoggen: The jury is satisfactory to the defendants.

Thereupon, the jury was sworn to try the case.

[fol. 14] (At this time, the court recessed until 2:00 o'clock P. M. the same day, after the court had admonished the jury not to separate and not to discuss the case among themselves or with anyone else.)

COURT'S NOTE RE TESTIMONY OF DR. JOE SHUFFIELD

The Court: Let the record show that it is stipulated and agreed by counsel, the defendants being present, that the court and counsel retire to chambers and there take the testimony of Dr. Joe Shuffield, a witness on behalf of the defendants who in an emergency cannot remain, and that said testimony can be transcribed and read to the jury as the testimony of Dr. Joe Shuffield as stated.

(Thereupon, the testimony of Dr. Shuffield was taken in chambers during the recess and later transcribed by the reporter to *the* read in evidence in the trial of this case.)

The court reconvened at 2:00 o'clock P. M., and after the opening statements by counsel, the following proceedings were had and done, to-wit:

The state, to sustain the issues in its behalf, introduced the following testimony, to-wit:

MR. ROY CASTILLOW, a witness called by the State, after being first du*t*y sworn, testified as follows:

Direct examination.

By Mr. Robinson:

Q. State your name?

A. Roy Castillow.

Q. What is your occupation?

A. I am Superintendent of the Southern Cotto*l* Oil. Company.

Q. How long *youe* you been with that company?

A. 13 years.

Q. Where is your plant located?

A. At the foot of East 9th Street, North Little Rock.

Q. Here in Pulaski County?

A. Yes, sir.

Q. Mr. Castillow, did a strike occur at that plant last December?

A. Yes, sir.

Q. When was it the men walked out on strike?

[fol. 15] A. December 17th.

Q. December 17th?

A. Yes.

Q. Was Otha Williams working there at that time?

A. Yes, sir.

Q. Did he go out on strike?

A. No, sir.

Q. Did Willie Brown go out on strike?

A. No, sir.

Q. Did Willie Johnson go out on strike?

A. No, sir.

Q. Did Elvie Washington Williams go out on strike?

A. No, sir.

Q. Those four men did not go out on strike?

A. No, sir.

The Court: The record here has the name Willie Jackson. I just wanted you to be sure.

Mr. Robinson: That is a misprint some way, your Honor.

Q. Now do you know the defendant, Jessie Bean?

A. Yes, sir.

Q. Was he working there at that time?

A. Yes, just before the strike.

Q. Did he go out on strike?

A. Yes, sir.

Q. Do you know the defendant, Roy Cole?

A. Yes, sir.

Q. Did he go out on strike?

A. Yes, sir.

Q. And did the defendant, Louis Jones, go out on strike?

A. Yes, sir.

Q. That was on the 17th day of last December?

A. Yes.

Q. Now, on the 26th day of December of last year, were these men still out on strike.

A. Yes, sir.

Q. Then a labor dispute existed at the plant of the Southern Cotton Oil Company at that time?

A. Yes, sir.

Mr. Robinson: I believe that is all.

[fol. 16] Cross-examination.

By Mr. Schoggen:

Q. Mr. Castillow, there never was any trouble there at the plant proper, was there?

A. No, sir.

Q. Now, when these men went out on strike on December 17, 1945, what condition was the plant in as to being full of seet and so forth?

A. It was in a normal operation. We had about our peak storage of seed on hand.

Q. And when the employees went out on strike, there were about 112 of them, *wasn't* there?

A. Yes, in that neighborhood.

Q. And that made it necessary for you to shut the plant down didn't it?

A. Yes, sir.

Q. And you were not able to get the plant in operation again until in January after you had gone into Chancery Court and gotten an injunction against picketing. That is correct, isn't it?

A. Yes, sir.

Q. Then, after you got that injunction on the 3rd or 4th of January, you were able to resume your normal operation of the plant?

A. What date was that?

Q. I believe January?

A. January 24th.

Q. It was January 24th when that injunction was granted?

A. No, I don't know when the injunction was granted. It was January 24th when the plant started operation.

Q. After you got the picketing stopped by injunction, you were able to go ahead with your normal operation?

A. About two or three weeks.

Q. About two or three weeks?

A. Yes.

Mr. Schoggen: That is all.

[fol. 17] Redirect examination.

By Mr. Robinson:

Q. You were asked with reference to the trouble occurring on the property of the Southern Cotton Oil Company. Do you know where the trouble did occur?

A. Yes, sir.

Q. How close was that to the property of the Southern Cotton Oil Company?

A. Half a block.

Q. As a matter of fact, it was across the railroad, wasn't it?

A. A few feet across the railroad right-of-way.

Q. That is near the property of the Southern Cotton Oil Company where the labor dispute existed?

A. That is correct.

Mr. Robinson: That is all.

Recross-examination.

By Mr. Schoggen:

Q. Mr. Castillow, during the time the pickets were walking back and forth there, you went in and out all the time, didn't you?

A. Yes, sir.

Q. Do you recall talking to one of the defendants, Louis Jones, on the morning of the 26th of December?

A. Yes, but I couldn't swear it was that date, but I almost could. I believe it was the morning of the 26th.

Q. It was shortly after he had come back from burying his mother, wasn't it?

A. I don't remember that—whether he had just come back from burying his mother or what happened to him.

Q. You were not, I believe, Mr. Castillow, down there on 9th Street when the trouble between some of the boys arose?

A. No, I wasn't at the plant.

Q. You were not at the plant?

A. No, sir.

Q. So all you know about where that happened is what you have been told about it?

A. What I have been told.

[fol. 18] Q. You don't know anything about that at all?

A. No, sir, I don't know anything about that at all.

Q. You don't know anything about these three defendants here, Mr. Castillow, ever encouraging or aiding any unlawful assemblage, do you?

A. Just what I have been told.

Q. Just what you have been told. You don't know of your own personal knowledge?

A. No, sir.

Q. What time did you leave there on the afternoon of December 26th?

A. In the neighborhood of 2:30, I would say.

Q. In the neighborhood of 2:30?

A. Yes, sir.

Q. You don't know anything about who started the trouble, of your own knowledge?

A. Just what I have been told is all.

Mr. Schoggen: That is all.

Redirect examination.

By Mr. Robinson:

Q. All you know about that phase of it is what you have been told?

A. That is all.

Q. You weren't down there in the tent that morning?

A. I wasn't in the tent, no, sir.

Mr. Robinson: That is all.

Witness excused.

Willie Brown (CM), a witness called by the State, after being first duly sworn, testified as follows:

Direct examination.

By Mr. Robinson:

Q. Your name is Willie Brown?

A. Yes, sir.

Q. Where do you work, Willie?

A. At the Southern Oil Mill.

Q. How long have you worked at the Southern Oil Mill?

[fol. 19] A. About a year or better.

Q. About a year or better?

A. Yes, sir.

Q. Were you working down there the 17th day of last December when the men went out on strike?

A. Yes, sir.

Q. Did you go out on strike?

A. No, sir.

Q. You continued to work down there?

A. Yes, sir.

Q. Are you on parole from the penitentiary?

A. Yes, sir.

Q. How long have you been out of the penitentiary?

A. Since 1940.

Q. What kind of sentence did you have?

A. Life.

Q. You were sentenced from what County?

A. From Chicot County.

Q. You have been on parole since 1940?

A. Yes, sir.

Q. And in December of 1945 when the others went out on strike, you didn't go out on strike?

A. No, sir.

Q. Did you work down there on the 26th day of December, the day after Christmas?

A. Yes, sir.

Q. Do you remember who else worked there that day?

A. Yes, sir.

Q. Who else worked there that day?

A. Otha Williams and Willie Johnson and—I forget the other boy, I can't call his name real good, but it is Cross.

Q. Lawrence Cross?

A. Yes, sir, and Washington.

Q. Elvie Washington Williams?

A. Yes, sir.

Q. What time did you all knock off from work that afternoon?

A. Around 5:00 o'clock or a little better.

Q. Around 5:00 o'clock or a little better?

A. Yes, sir.

Q. Did you all leave there together?

A. Yes, sir, we started out together.

Q. How many were at work that day?

[fol. 20] A. Five of us.

Q. Five of you including yourself?

A. Yes, sir.

Q. Lawrence Cross just worked that day, didn't he?

A. Yes, sir.

Q. You say all five of you started to leave?

A. Yes, sir.

Q. Did you go back for anything?

A. Yes, sir, I and Otha went back to unload a truck.

Q. You and Otha went back to unload a truck of what?

A. Cotton seed.

Q. How did you unload the truck?

A. They have got a suction pipe that sucks the seed.

Q. You and Otha Williams did that?

A. Yes, sir.

Q. Then did you go out?

A. Yes, sir.

Q. Did you catch up with the other boys then?

A. Yes, sir.

Q. Where were they?

A. They were in front of the office—that telegram pole opposite the office.

Q. They were in front of that telegram pole opposite the office?

A. Yes, sir.

Q. Which way did you all go?

A. We went on across the street.

Q. You were going in which direction?

A. Coming up East 9th Street.

Q. You were going West on East 9th Street?

A. Yes, sir.

Q. Coming toward town?

A. Yes, sir.

Q. Before you started across the street over there and when you were on the corner, did you see anybody across over there that was out on strike?

A. Yes, sir.

Q. Were they men you knew?

A. Yes, sir.

Q. Who did you see over there?

A. Bishop Jackson and Louis Jones and the boy that got killed and Robert Brooks.

[fol. 21] Q. You saw Bishop Jackson, Louis Jones, and Walter Campbell, who got killed, and Robert Brooks?

A. Yes, sir.

Q. Did you see any of the others?

A. No, sir, not at that time.

Q. Did you start on across the street?

A. Yes, sir.

Q. All right. When you got started across the street, did any of them say anything to you or any of the men you were with?

A. Yes, sir, Louis called Otha——

Q. That was Louis Jones?

A. Yes, sir, and told him to wait a minute, he wanted to talk to him, and Otha told him he didn't have time, he was on his way home and he would see him another day.

Q. Did he do anything else?

A. He gave a signal and said "Come on, boys."

Q. He gave a signal and said "Come on, boys"?

A. Yes, sir.

Q. That was after Otha Williams told him he didn't have time, that he was on his way home?

A. Yes, sir.

Q. What happened after Louis Jones gave the signal and said "Come on, boys"?

A. They flew up like blackbirds and came fighting.

Q. They flew up like blackbirds and came fighting?

A. Yes, sir.

Q. You didn't see Roy Cole before you went across the street?

A. No, sir, I didn't see him.

Q. Did you see Cole after that?

A. Yes, sir, he told me to go ahead on, that they wasn't after me.

Q. The defendant, Roy Cole, told you to go ahead on, that they wasn't after you?

A. Yes, sir.

Q. Did you go ahead on?

A. Yes, sir.

Q. Did Cole have any kind of waspon with him?

A. Yes sir, he had a stick.

Q. He had a stick?

A. Yes, sir.

Q. That was the defendant, Roy Cole?

[fol. 22] A. Yes, sir.

Q. Where did you go to?

A. I went and cought the car.

Q. You went and caught the car?

A. Yes, sir.

Q. Now, who were you walking with? Were you with Otha Williams?

A. We all was coming across together.

Q. You all were coming across together?

A. Yes, sir.

Q. Did you see anybody run?

A. The boy that got killed run and cut him off and hit him with a stick.

Q. That was Walter Campbell?

A. Yes, sir.

Q. Did you see him hit Otha Williams?

A. Yes, sir.

Q. What did he hit him with?

A. He hit him with a stick.

Q. Did you see Robert Brooks grab Willie Johnson?

A. No, sir.

Mr. Schoggen: I object to that, your Honor.

Mr. Robinson: I will withdraw the question.

Q. Did you see any of the rest of it?

A. No, sir, I didn't see any of the rest of it. Cole told me to go ahead on and I run and caught the car.

Q. Cole told you to go ahead on, that they weren't after you?

A. Yes, sir.

Mr. Robinson: That is all.

Cross-examination.

By Mr. Schoggen:

Q. Willie, are you still working down there at the Southern Cotton Oil Company?

A. Yes, sir.

Q. Have you been working there right along?

A. Yes, sir.

Q. You have been on parole from the penitentiary since 1940?

A. Yes, sir.

[fol. 23] Q. What did you get a life sentence for?

A. For murder.

Q. Who did you kill?

A. I killed a fellow down here—I can't call his name.

Q. It was a white man, wasn't it?

A. Yes, sir.

Q. You didn't want to get in any trouble, is that it?

A. I tried to stay out of it where I go, because I want to stay out.

Q. You want to stay out?

A. Yes, sir.

Q. Willie, you know these three defendants here, don't you?

A. Yes, sir.

Q. Louis Jones, Roy Cole and Jessie Bean?

A. Yes, sir.

Q. You worked there with them at the plant?

A. Yes, sir.

Q. Neither of these three men took any part in that fight?

A. I wouldn't know; I kept on running.

Q. You were there and you testified about seeing signs made?

A. I was giving account of what I saw while I was there.

Q. You didn't see either one of these defendants do anything there, did you?

A. No, sir, I didn't.

Q. You didn't see them strike anybody or attempt to help anybody, did you?

A. One thing I seen was when Louis Jones gave the signal and said "all right, boys."

Q. What kind of a signal was that?

A. I reckon that meant for them to come on.

Q. You reckon that meant for them to come on?

A. Yes, sir.

Q. What time of day was it?

A. I wouldn't know exactly. We got off a little before 5:00 and at 5:00 if we wasn't doing much.

Q. Was there a light in the grocery store this side of the railroad track?

A. I didn't pay that any attention.

Q. You didn't pay any attention to that?

A. No, sir.

Q. And Roy Cole came up later?

[fol. 24] A. Yes, sir.

Q. Did Jessie Bean come up later?

A. I never did see him.

Q. You didn't see him at all?

A. No, sir.

Q. You did see Louis Jones and you saw him make some kind of a sign you say?

A. Yes, sir.

Q. And it was shortly after that time that Campbell and Otha Williams had a fight?

A. Yes, sir.

Q. You don't know anything about what they were fighting about?

A. L. C. told me they were going to jump us after dinner, going to whip us.

Q. Who is L. C.?

A. L. C. is all I know.

Q. He is not one of the defendants?

A. No, sir, he is not one of them, but he was walking picket.

Q. He was walking picket?

A. Yes, sir.

Q. You didn't hear either one of these defendants say anything to anybody?

A. No more than Louis when he called the boy and told him he wanted to talk to him.

Q. How did he do that? He just told him he wanted to talk to him?

A. He said "Wait a minute," he wanted to talk to him.

Q. He said "Wait a minute," he wanted to talk to him, and Otha said he didn't have time or something like that and went on?

A. Yes, sir.

Q. Who did that—Louis Jones?

A. Yes, sir.

Q. Did Louis Jones make any effort to stop him?

A. No, sir, he gave the signal for the rest of them to stop them.

Q. Where were the rest of them?

A. Some of them was there—I don't know where the rest were.

Q. Don't you know, as a matter of fact, that you five boys came out and crossed the track that night for the purpose of having a fight with these boys?

[fol. 25] A. No, sir, I don't think we did.

Q. And that one of your bunch did kill Campbell?

A. I know that, but we didn't come out for no fight or it would have been more than what it was.

Q. How many of them were there?

A. Four besides myself.

Q. Four beside you and you made five?

A. Yes, sir.

Q. Where do you live?

A. I lived at Sweet Home at that time, but I live here in town now.

Q. How did you go home from the plant?

A. I got the streetcar and got off the streetcar and got a taxi.

Q. You got the streetcar and got off the streetcar and got a taxi?

A. Yes, sir.

Q. There is an airport bus that comes right by the plant, isn't there?

A. I have to get off and walk and when I get the streetcar, I don't have but a block to walk to the taxi stand.

Q. Where do these other fellows live?

A. I don't know.

Q. You don't know that?

A. No, sir.

Q. Did you have on your overcoat that day?

A. No, sir, I didn't have on my overcoat that day.

Q. Did you have it on your arm?

A. I had a coat on my arm, but I didn't have an overcoat.

Q. What kind of coat was it?

A. A little short coat.

Q. What kind of gun did you have under it?

A. I didn't have any kind.

Q. It was pretty cole, wasn't it?

A. It was pleasant weather, I call it.

Q. You weren't wearing your coat, but had it on your arm?

A. Yes, sir, I had it on my arm.

Q. How many knives do you carry, Willie?

A. I don't carry any.

Q. You don't carry a long, dark soldier's knife?

[fol. 26] A. No, sir, I don't have one.

Q. Don't you carry what you boys call a "hog billed knife"?

A. No, sir.

Q. You never did put your gun in Roy Cole's locker?

A. No, sir, I always put it in my own. I didn't have one.

Q. Oh, you didn't have one?

A. No, sir.

Q. Was there a light on the streetcar when you went up and got on the car?

A. I didn't pay it any attention. I just run and got on the streetcar.

Q. Was it clear or raining?

A. No, it wasn't raining.

Q. It wasn't raining?

A. No, sir.

Q. You don't know exactly what time it was?

A. No, sir.

Q. You didn't get off until after 5:30?

A. We got off before 5:30. We just piddled around and we take off when we catch the boss out of sight.

Q. When you catch the boss out of sight, then you take off?

A. Yes, sir.

Q. These pickets were walking just to the West of the plant, weren't they?

A. I wouldn't know what you call——

Q. It was between the plant and the railroad track, wasn't it?

A. Yes, sir.

Q. And you went out there and crossed that line instead of crossing the street?

A. That's the only way we had to catch the streetcar.

Q. Couldn't you go across in front of that ice plant?

A. That's just about the same. Anyway, we come in front of the ice plant anyway. We come across just about the front of it any way we come.

Q. You all five came out in a bunch?

A. All came out together.

Q. Then two of you went back to unload the seed, you and Otha Williams?

A. Yes, sir.

Q. And the others waited there for you?

[fol. 27] A. Yes, sir, they waited.

Q. They waited until you came back and you all went over in a gang together?

A. Yes, sir.

Q. And the other three waited for you and Otha Williams before they went across?

Q. How long did it take to unload that seed?

A. It didn't take so very long.

Q. You don't know whey these other three men didn't go on home instead of waiting for you?

A. I reckon cause we all worked together is the only reason I can say.

Mr. Schoggen: That is all.

Redirect examination.

By Mr. Robinson:

Q. You say L. C. Johnson was walking picket down there?

A. Yes, sir.

Q. None of these three defendants were walking picket?

A. I didn't see any.

Q. Where you saw Louis Jones when he give the signal with his hands and said "Come on, boys," that wasn't the picket line, was it—this was on past where the picket line was?

A. Yes, sir.

Q. The picket line was on the East side of the railroad track?

A. It was on this side, right on that side of the railroad. The railroad runs this way, (indicating) and the picket line was over here (indicating).

Q. That would be East?

A. Yes, sir.

Q. And these boys were on the West side?

A. Yes, sir.

Q. And that is where the disturbance took place, on the West side?

A. Yes, sir.

Q. And L. C. Johnson was the one that was walking picket?

A. Yes, sir.

Mr. Robinson: That is all.

Witness excused.

[fol. 28] **Willie Johnson** (C. M.), a witness called by the State, after being first duly sworn, testified as follows:

Direct examination.

By Mr. Robinson:

Q. Your name is Willie Johnson?

A. Yes, sir.

Q. Where do you work, Willie?

A. At the Southern Cotton Oil Company

Q. You work at the Southern Cotton Oil Company?

A. Yes, sir.

Q. Were you working at the Southern Cotton Oil Company last December when the men went out on strike down there?

A. Yes, sir.

Q. Did you go out on strike?

A. No, sir.

Q. Did you work down there on the 26th day of last December, the day after Christmas

A. Yes, sir.

Q. Do you know who else worked there that day?

A. Elvie Washington, Willie Brown, Otha Williams and Lawrence Cross.

Q. And yourself?

A. Yes, sir.

Q. That made five?

A. Yes, sir.

Q. Did you all leave at the same time that evening?

A. No, sir.

Q. How did you leave?

A. Me and Elvie Washington and Lawrence Cross walked out, and Otha Williams and Willie Brown had to unload a truck.

Q. Two of them unloaded it?

A. Yes, sir.

Q. Did you stand there on the corner while they were unloading the seed?

A. Yes, sir.

Q. Who did you see

A. Roy Cole, Jessie Bean and Bishop Jackson.

Q. You saw Roy Cole, Jessie Bean and Bishop Jackson. Those were the three you recognized?

[fol. 29] A. Yes, sir.

Q. Where did you see them?

A. They were standing across the street in front of me.

Q. East from where you were?

A. Yes, sir.

Q. Is that the way you went to catch the streetcar?

A. Yes, sir.

Q. When Willie Brown and Otha Williams came out, what did you do?

A. We started on across the track to catch the car and one of the boys told Otha Williams he wanted to talk to him, and Otha told him he didn't have time, he had to go home, and kept walking on, and Robert Brooks ran up behind me and caught me behind the waist——

Mr. Schoggen: I object to that, if the Court please.

The Court: Objection sustained.

Mr. Robinson: I want to show the entire transaction.

The Court: I think you have limited yourself by the language of your information. It will be excluded.

The State objected to the above ruling of the court and at the time asked that its exceptions be noted of record, which was accordingly done.

Mr. Robinson: I want to show what the witness would answer.

(Thereupon, the court and counsel retired to chambers where the following proceedings were had:)

The Court: You have so drawn this information, as far as a violent attack is concerned, that the only attack was upon Walter Campbell and no one else. You are describing an unlawful assemblage that must under the statute culminate in a violence—that is, according to the first portion of Section 2. For you to show that there was violence upon Willie Johnson by Robert Brooks would not tend to show that there was violence on Otha Williams by Walter Campbell. In other words, it would become irrelevant. The only way I could see that that would become admissible would be on the theory that you had made a prima facie case and had already established by evidence that Robert Brooks was one of the conspirators. You haven't connected it that way yet.

Mr. Robinson: We alleged that Walter Campbell was acting in concert with others.

[fol. 30] The Court: The reason I am excluding it, you have not laid the foundation as yet to show that Robert Brooks was concerned in a conspiracy. The whole thing is aimed at a disclosure that Otha Williams was prevented from working because Walter Camptell acted in concert with them. That is the point.

Mr. Robinson: We are doing it now. The acts during the course of a conspiracy would be admissible in evidence if the conspiracy was once established. The acts and declarations themselves are necessary sometimes to establish a conspiracy. All acts of conspirators would be admissible if it had been previously shown that a conspiracy existed. The only way we can show that is by the acts themselves and that is what we are trying to do.

The Court: The question is—has this got anything to do with preventing Otha Williams from working?

Mr. Robinson: It shows the assemblage was unlawful.

The Court: I said on the bench that you had limited yourself by the language of the information. The use of force and violence by Robert Brooks on Willie Johnson would not be germaine to the issue of whether or not Otha Williams was prevented from working by Walter Campbell and others working in concert with him.

Mr. Robinson: It was all part of the same transaction and occurred at the same scene and place.

The Court: I don't believe it is competent and that is my ruling.

The State objected to the above ruling of the Court and at the time asked that its exceptions be noted of record, which was accordingly done.

Mr. Robinson: I want to make my record, if the Court please.

Mr. Robinson: We propose to prove that at the same time and place and as a part of the same scheme and plan, Robert Brooks, acting in concert with Walter Campbell and others, made an attack on Willie Johnson.

(Thereupon, the court and counsel for both the State and defendants returned into open court, where the following proceedings were had:)

Q. Who was it you saw across the railroad track before you crossed the railroad track?

[fol. 31] A. Roy Cole, Jessie Bean and Bishop Jackson.

Q. You saw Roy Cole, Jessie Bean and Bishop Jackson?

A. Yes, sir.

Q. Were you over there when the attack was made on Otha Williams by Walter Campbell?

A. Yes, sir.

Q. Did you see that?

A. No, sir.

Q. What did you do?

A. Robert Brooks grabbed me.

The Court: Wait a minute.

Mr. Schoggen: That is what we objected to, your honor.

The Court: Don't tell about any other fights. Just tell about the fight between Otha Williams and the other man.

Q. What did you do

A. I run over back to the office. I didn't see anything else.

Q. You ran over to the office of the Southern Oil Company?

A. Yes, sir.

Mr. Robinson: That is all.

Cross-examination.

By Mr. Schoggen:

Q. You didn't see anything that happened after that?

A. No, sir.

Q. The only thing you know about this case here is that you saw Roy Cole, Jessie Bean and Bishop Jackson over there with some other strikers in front of that little store on 9th Street?

A. Yes, sir.

Q. That is all you know about it?

A. Yes, sir.

Mr. Schoggen: That is all.

Redirect examination.

By Mr. Robinson:

Q. You were over there when they jumped on Otha Williams, weren't you?

[fol. 32] A. Yes, sir.

Q. Why didn't you see it?

A. I didn't have time to see it.

Q. You had gone from the plant over there and you ran back over to the plant?

A. Yes, sir.

Q. Now, the picket line was right there by the side of the plant, wasn't it?

A. Yes, sir.

Q. Did you ever see Johnson walking picket?

A. I didn't see him.

Q. You don't know who was walking picket?

A. No, sir.

Q. The men you saw over on the railroad track, Roy Cole, Bishop Jackson and Jessie Bean, weren't on the picket line?

A. No, sir.

Mr. Robinson: That is all.

Recross-examination.

By Mr. Schoggen:

Q. Who did you say you saw?

A. Roy Cole, Jessie Bean and Bishop Jackson.

Q. You didn't see Louis Jones?

A. No, sir.

Q. You didn't see Louis Jones make any signal or make any sign?

A. No, sir.

Q. All you know is there was a fight that came up between Walter Campbell, one of the strikers, and Otha Williams, a boy who is still working there?

A. Yes, sir.

Q. You didn't see the fight?

A. No, sir.

Q. You don't know who started it, do you?

A. No, sir.

Mr. Schoggen: That is all.

Redirect examination.

By Mr. Robinson:

Q. Why didn't you see it?
[fol. 33] A. I was gone. That's the reason I didn't see it.

Mr. Schoggen: I don't think it would be proper, if the Court please, to take his own witness and undertake to cross examine him.

Mr. Robinson: I asked him why he didn't see it. That is not cross examination.

The Court: Objection overruled.

The defendants objected to the above ruling of the Court and at the time asked that their exceptions be noted of record, which was accordingly done.

Q. Did you see Robert Brooks after you got over there?
A. Yes, sir.
Q. Did you see him before you got over there?
A. No, sir.
Q. There were quite a few over there that you didn't see before you got over there?
A. Yes, sir.

Mr. Robinson: That is all.

Witness excused.

Elvie Washington (CM), a witness called by the State, after being first duly sworn, testified as follows:

Direct examination.

By Mr. Robinson:

Q. Your name is Elvie Washington Williams?
A. That's the way they have got it down, but it is Elvie Washington.
Q. Elvie Washington?
A. Yes, sir.
Q. Where do you work?
A. At the Southern Cotton Oil Mill.
Q. Were you working there on the 17th day of last December when some men went out on strike?

A. Yes, sir.

Q. Did you go out on strike?

A. I wasn't there the day they struck—I was in England.

[fol. 34] Q. You weren't there the very day they went out on strike, but you were an employee of the company?

A. Yes, sir.

Q. Were you working there on the 26th day of last December?

A. Yes, sir.

Q. Do you know who else was working that day?

A. Lawrence Cross, Willie Brown, Willie Johnson and myself.

Q. And Otha Williams?

A. Yes, sir, and Otha Williams.

Q. There were five of you?

A. Yes, sir.

Q. Did you all leave together that afternoon?

A. We started together and the seed truck came in and Willie Brown and Otha Williams went to unload the truck and we went to the corner and waited on them.

Q. While you were standing on the corner, did you see any strikers across the street?

A. Yes, sir.

Q. Who did you see?

A. Bishop Jackson and Jessie Bean and—I don't know that other boy's name.

Q. One of these defendants?

A. Yes, sir.

Q. You saw him over there?

A. Yes, sir.

Q. Well, did you all go on across the track?

A. Otha Williams and them unloaded the truck and they come on out and we went on across the street over there.

Q. Where were you going?

A. To the carline.

Q. You were coming West on 9th Street going to the carline?

A. Yes, sir.

Q. Then what happened?

A. One of them called to Otha Williams and told him he wanted to speak to him. Louis is what he called him, and Otha told him he didn't have time, he was trying to get home, he was late, and he went on walking across the railroad track and one of them hit Willie Johnson and he hollered——

Q. Who hit Willie Johnson?

A. That tall boy hit him—I don't know his name.

[fol. 35] Q. You don't mean either one of these defendants?

A. Not either one of them. A tall boy hit him.

Mr. Schoggen: I object to that, if the court please.

The Court: Objection sustained.

Q. What happened to Otha Williams?

A. I looked around and this man was coming around me with a club and Otha broke and run.

The Court: You will have to identify the man. Tell who it was.

Q. Do you know who it was?

A. No, sir, I don't know the man.

Mr. Schoggen: We move to exclude it, if the Court please.

The Court: He must limit it to the attack on Otha Williams. There is no proof that this person is one of the strikers.

Mr. Robinson: Maybe he didn't know him, may it please the Court. You mean a witness can't testify to what he saw if he doesn't know the person's name? He can testify somebody did it.

The Court: It could have been somebody that wasn't connected with this.

Mr. Robinson: I am going to prove that.

The Court: Let's hear it. I might allow the witness to testify to that on the promise that the State is going to connect it up with a conspiracy.

Mr. Robinson: I am going to prove who it was that made the attack and his name is alleged in the indictment.

The Court: If you are going to do that, go ahead and let him testify.

Q. Were you walking with Otha Williams?

A. Yes, sir.

Q. Then what happened?

A. Otha broke and run and this man run in front of ham and said "Don't you run, I got you".

Mr. Schoggen: That is objected to, unless this witness knows what man it was.

The Court: The State has promised to show it was a man alleged in the information.

[fol. 36] Mr. Schoggen: Walter Campbell, but he can't prove it by this witness. This witness says he doesn't know.

The Court: On that promise, the Court is admitting it.

The defendants objected to the above ruling of the Court and at the time asked that their exceptions be noted of record, which was accordingly done.

Q. Go ahead.

A. The last thing I heard him say was "Why don't you go on"?—"I ain't bothering you", and I taken out across the street and went down the railroad track.

Q. You say Otha Williams broke and run and this man ran in front of Otha?

A. Yes, sir.

Q. Did you see him hit Otha?

A. No, sir.

Q. What did Otha say to him?

A. He said "Don't you run, I got you" and Otha said "I ain't bothering you, why don't you go on?".

Q. What did you do?

A. I ran across the street and down the railroad.

Q. Why did you run?

A. I didn't want to get a lick myself.

Mr. Robinson: That is all.

Cross-examination.

By Mr. Schoggen:

Q. You say you didn't want to get a lick yourself?

A. I sure didn't.

Q. Hadn't anybody threatened to strike you, had they?

A. No, sir.

Q. So when you get it right down to what you know about it, you saw Otha Williams and Walter Campbell having a fight?

A. I didn't say Otha Williams or who was having a fight.

Q. You didn't work at night?

A. No, sir.

Q. You don't know which one of them started the fight?

A. No, sir. All I know a man run up in front of him with a stick and said "Don't you run, I got you" and Otha told him "Why don't you go on? I ain't bothering you".

[fol. 37] The Court: Now, the person alluded to by this witness will have to be identified by the conversation this witness has just related and the action of running around in front of the man.

Mr. Robinson: I think Willie Brown has already testified to that.

The Court: The Court cannot comment on the testimony You can pursue it or recall Willie Brown either way.

Mr. Robinson: The Court made the statement that I would have to connect it up that it was Walter Campbell and it is my contention that I have already shown that by the witness, Willie Brown.

The Court: That is a matter for the jury. Go ahead.

Q. That is all you know about it?
A. Yes, sir, that's all I know.

Mr. Schoggen: That is all.

Witness excused.

Willie Brown (CM), being recalled by the State, further testified as follows:

Redirect examination.

By Mr. Robinson:

Q. Your name is Willie Brown?
A. Yes, sir.
Q. You testified a few minutes ago?
A. Yes, sir.
Q. I believe you testified that you were near the Southern Cotton Oil Company's plant on the evening of December 26, 1945?
A. Yes, sir.
Q. Did you see Walter Campbell strike Otha Williams?
A. Yes, sir, he outrun him and cut him off.
Q. You saw Walter Campbell hit Otha Williams with a club?
A. Yes, sir.

Mr. Robinson: That is all.

[fol. 38] Recross-examination.

By Mr. Schoggen:

Q. Did you see anybody else hit Otha?

A. No, sir.

Q. Campbell is the only one that struck him?

A. That's all I seen.

Q. And you were there?

A. Yes, sir.

Q. And Otha Williams killed him?

A. I don't know—I wasn't there.

Q. You didn't stay for that?

A. No, sir, I didn't stay.

Q. You left shortly after the fight *out* under way between Otha Williams and Walter Campbell?

A. Yes, sir, I walked on because Cole told me to go ahead on and I didn't stop to hesitate.

Q. You don't really know what did happen after that, do you?

A. No, sir.

Mr. Schoggen: That is all.

Redirect examination.

By Mr. Robinson:

Q. Did the defendant, Cole, tell you to go on, that they weren't after you?

A. Yes, sir.

The Court: Tell the jury, if you know, just how Campbell went about it when he went to attack Otha Williams. What was said and how did he go about it?

The Witness: He run and cut him off and told him there wasn't no use running and he fired him across the head with a stick.

The Court: That seems to iden*fity* it.

Q. Was Otha Williams running?

A. Yes, sir.

Q. And Campbell cut him off and hit him with a stick?

A. Yes, sir.

The Court: On the question we had up just now, this sufficiently identifies Campbell as the man alluded to by the witness, Washington, and the Court so holds.

[fol. 39] The defendants objected to the above ruling of the Court and at the time asked that their exceptions be noted of record, which was accordingly done.

Mr. Robinson: That is all.

Witness excused.

L. C. Johnson (CM), a witness called by the State, after being first duly sworn, testified as follows:

Direct examination.

By Mr. Robinson:

Q. Your name is L. C. Johnson?

A. Yes, sir.

Q. You formerly worked for the Southern Cotton Oil Company?

A. Yes, sir.

Q. Were you working ther- when they went on strike down there on December 17th of last year?

A. Yes, sir.

Q. Did you go on strike with the others?

A. Yes, sir.

Q. Do you remember the day when the trouble occurred and Walter Campbell was killed?

A. Yes, sir.

Q. Were you walking picket that day?

A. Yes, sir.

Q. Who else was walking picket?

A. Me and Brother Russell.

Q. Were you walking picket when this occurred?

A. Yes, sir.

Q. And Russell was walking picket?

A. Yes, sir.

Q. Was anybody else walking pciket besides you two?

A. Not then.

Mr. Robinson: That is all.

Cross-examination.

By Mr. Schoggen:

Q. How long had you worked down there?

A. Four months.

[fol. 40] Q. Were you working while Willie Brown was working down there?

A. Yes, sir.

Q. You know Willie Brown who has testified here?

A. Yes, sir.

Q. You were not there at the place where they had this trouble in front of Andrews Grocery on December 26th?

A. No, sir, I was there walking picket.

Q. You were back on the other side of the track?

A. Yes, sir.

Q. You didn't see any of the trouble?

A. No, sir.

Q. Now, you were one of the pickets that changed your shifts down there at the tent where you made headquarters?

A. That's right.

Q. Do you know these defendants here that are charged with encouraging Walter Campbell in preventing Otha Williams from working?

A. No, sir.

Q. Do you know these defendants?

A. Yes, sir, I know them.

Q. All three of them?

A. Yes, sir.

Q. How often would you be around the headquarters there at the tent?

A. I was there every day.

Q. Did you see these defendants there from time to time?

A. Yes, sir, they all would be around, but Louis wasn't there at the time—he was out of town.

Q. He was out of town?

A. Yes, sir.

Q. Did you ever hear either one of these three defendants encourage any acts of violence down there?

A. No, sir, I never did.

Q. What did they do with reference to complying with the law, if you know? What kind of advice did they give the boys on the picket line? What did they tell them to do?

A. They told them not to carry no weapons or bother nobody.

Q. They told them not to have any trouble.

A. Nobody, and if anybody comes up and says anything to them, to keep walking.

[fol. 41] Q. They told you if anybody came up and siad anything to you, to keep walking?

A. Yes, sir.

Q. And that was what you did while you were on the pickct line?

A. Yes, sir.

Q. Did you ever seek Willie Brown with a gun down there?

A. Yes, sir.

Q. Do you know what kind it was?

A. A 45 automatic.

Q. What did he do with it?

A. He kept it in his locker and toted it around every day with a Howard knife.

Q. Who did?

A. Willie Brown.

Q. You have seen him with all those weapons?

A. He took the knife and took some money away from one boy down there.

Mr. Robinson: I object to that, may it please the Court.

The Court: Objection sustained.

Mr. Schoggen: That is all.

Redirect examination.

By Mr. Robinson:

A. As a matter of fact, you went on picket that day at 12:00 o'clock?

A. That's right.

Q. There wasn't but *tow* of you that walked picket at the time?

A. At a time.

Mr. Robinson: This is cross-examination on a new matter brought out by counsel for the defendants, may it please the Court.

The Court: All right, proceed.

Q. You were not at the tent that morning?

A. Yes, sir.

Q. You were down there when they had the meeting that morning?

A. I don't know nothing about a meeting.

[fol. 42] Q. Who was down there when you came down there?

A. I didn't pay it any attention. I come down to relieve the ones walking picket.

Q. You weren't at the tent when they had the agreement about—they were going to do that afternoon? You knew about it that day at noon and told it, didn't you?

A. No, sir.

Mr. Schoggen: I object to that, your Honor. That is not proper cross-examination.

The Court: Objection sustained and it will be excluded.

Mr. Robinson: No further questions.

Witness excused.

OTHA WILLIAMS (CM), a witness called by the State, after being first duly sworn, testified as follows:

Direct examination.

By Mr. Robinson:

Q. Your name is Otha Williams?

A. Yes, sir.

Q. Where do you work, Otha?

A. At the Southern Cotton Oil Company.

Q. How long have you worked there?

A. Off and on 22 years.

Q. Off and on 22 years?

A. Yes, sir.

Q. Were you working there last December 17th when the men went out on strike?

A. I was, I wasn't at night.

Q. Did you go out on strike?

A. No, sir, I didn't.

Q. Were you working there the 26th day of last December, the day after Christmas?

A. I sure was.

Q. Who else was working that day?

A. Willie Brown, Elvie Williams, Willie Johnson and this other boy—I can't call his name.

Q. Lawrence Cross.

A. Lawrence Cross.

Q. There were five of you working that day?

A. Yes, sir.

[fol. 43] Q. Did you leave with the others when you all laid off from work that afternoon?

A. I sure did.

Q. Did you all leave there together?

A. We sure did.

Q. Did you go back for anything?

A. I didn't get for until I had to go back and unload a truck.

Q. You and Willie Brown?

A. Yes, sir.

Q. How did you unload the truck?

A. The fellow pulled out and couldn't get his truck in reverse and I put it in reverse and turned it around and got out the man's truck and I come out under the suck pipe shed and me and Willie Brown came out together.

Q. To the corner?

A. Yes, sir.

Q. Is that the corner where the Southern Cotton Oil Company's plant is located?

A. Yes, sir.

Q. Is that where the three of them that had worked there that day were?

A. Yes, sir.

Q. Did you see any of the strikers over there before you crossed the street?

A. Yes, sir, I did.

Q. Who did you see?

A. Louis Jones, Roy Cole and this other fellow on the end (indicating one of the defendants).

Q. Jessie Bean?

A. Jessie Bean, yes, sir.

Q. Those men were out on strike?

A. Yes, sir.

Q. They were men who had worked with you at the plant?

A. They didn't work with me.

Q. They worked for the same company, I am talking about?

A. Yes, sir.

Q. What did you do when you got with the men that had worked that day.

A. I was on my way home.

Q. How were you going to get home?

A. I was on my way to 9th and Thomas to catch the streetcar.

[fol. 44] Q. Where is 9th and Thomas with reference to the oil mill?

A. About three blocks.

Q. In which direction?

A. Going West on East 9th Street.

Q. Then the streetcar doesn't come all the way down to the plant?

A. No, sir.

Q. In order to catch the streetcar you have to walk up to 9th and Thomas?

A. Yes, sir, I sure does.

Q. Where did you live?

A. I lived at 902 Pulaski.

Q. Is that where you live now?

A. No, sir, I live at 1220 Gaines.

Q. How were you going to get home?

A. I was going to reide the East 9th Street car to 9th and Main and transfer.

Q. You were going to ride the East 9th Street car to 9th and Main and transfer?

A. To the West 9th bus.

Q. You were going to transfer to the West 9th bus and go home that way?

A. Yes, sir.

Q. Is that the way you usually went home?

A. Yes, sir.

Q. You had been doing that for years?

A. Yes, sir, I have.

Q. Then you started to the carline to catch the car to come home?

A. Yes, sir, I did.

Q. Before you started to cross the track, you saw these three defendants?

A. Yes, sir, I did.

Q. Was anybody else with them?

A. Bishop Jackson was with them.

Q. What happened? Did you go across the track?

A. Yes, sir, I started across and Louis spoke to me and said, "Otha, I want to see you."

Q. That was Louis Jones, one of the defendants?

A. Yes, sir, and I said, "I am in a jurry, you will have to see me some other time. My wife called and wanted me to hurry home," and he said, "You are going to see me now."

[fol. 45] Q. He said, "You are going to see me now"?

A. Yes, sir, and I kept going and when I got close to the store, I got licks.

Q. What happened then?

A. The deceased—I was knocked from the sidewalk to the street.

Q. Who hit you?

A. The deceased one. I had four licks across my head before I could raise my hand and I said "What are you hitting me for?" but I didn't understand what he told me.

Q. Had you had any trouble with him?

A. No, sir, I hadn't had any trouble with him. I didn't even know him. He never did tell me what he was hitting me for and it looked like he was going to beat me to death. He knocked my glasses off of my eyes and I opened my knife with my teeth and he and I tied up, and when I got loose, I left him standing in the driveway on his feet.

Q. What did you do then?

A. I run across the street, and as I run across the street, the truck I had loaded came by.

Q. As you were running across the street, the truck you had loaded came by?

A. Yes, sir, and I caught the side of it and rode it to 9th and Broadway.

Q. You rode the truck to 9th and Broadway?

A. Yes, sir, and just before we got to 9th and Broadway, a fellow came by in an automobile that looked like the state police—it had "Highway Department" on the side and we stopped on 9th and Cumberland and asked him was he an officer, and he said "No." I went back and got on the side of the truck and rode to 9th and Broadway and got off the truck and walked down Broadway to 10th Street and went down 10th Street to Pulaski and went down Pulaski to where I lived.

Q. What did you do after you got there?

A. I called my boss back to the mill and they said he was not there and I called him home three times and I called over to the mill and got Mr. Taylor and he said——

Mr. Schoggen: I object to that.

The Court: Yes, that would be hearsay.

Q. You did get in touch with Mr. Taylor at the mill?

A. Yes, sir.

[fol. 46] Q. Did the officers come down to your place?

A. Yes, sir.

Q. And they took you down and put you in jail?

A. Yes, sir.

Q. When did you get out of jail?

A. The 27th.

Q. The next day?

A. Yes, sir.

Q. Where did you go then?

A. To the Baptist State Hospital.

Q. Were you bleeding?

A. Yes, sir, from the nose and ears.

Q. Was that the result of the blows Campbell had given you the evening before?

A. Yes, sir.

Q. Were you confined there in the hospital as a result of those injuries for several days?

A. For 17 days.

Q. Were you able to work during that time?

A. No, sir.

Q. After that, you went back to work?

A. Yes, sir.

Q. And you are still working?

A. Yes, sir.

Mr. Robinson: That is all.

Cross-examination.

By Mr. Robley:

Q. Who have you talked to about this case?

A. Who have I talked to about this case?

Q. Yes.

A. No one I knows of.

Q. How old are you?

A. 39—soon will be.

Q. How long have you been with the Southern Cotton Oil Mill?

A. Off and on 22 years.

Q. What do you mean by "off and on"?

A. Out of 22 years, I didn't work steady the whole 22 years.

[fol. 47] Q. What do you mean by that?

A. I worked two or three years and would lay off and go to some other job and work a while.

Q. Where did you work before you went to work for the Southern Cotton Oil Company the last time?

A. I worked for the Jacksonville Ordnance Plant.

Q. How long did you work there?

A. A year and six months.

Q. During the war?

A. Yes, sir.

Q. You are 39 years old now?

A. Yes, sir.

Q. You were 36 then?

A. I sure were.

Q. Were you called up for the draft?

A. I sure were.

Q. You didn't go?

A. No, sir, I was disqualified from the army.

Q. Why?

A. I don't understand. They didn't tell me how come they turned me down.

Q. How old were you when you went to work for the Southern Cotton Oil Company?

A. I was a little yougster, ten or eleven years old.

Q. What was your next job after you went to the Southern Cotton Oil Company?

A. Unloading seeds out of boxcars when I got up there.

Q. Where did you work next?

A. I worked for the City one year.

Q. What year?

A. That was the year 1941, I think it was.

Q. Where did you work in 1940?

A. In 1940, I worked, if I makes no mistake, part of 1940 at the Macke Mining Company.

Q. Where did you work in 1939?

A. In 1939, I worked here and yonder—I didn't have no steady job.

Q. Where did you work in 1938?

A. I didn't have no steady job in 1938.

Q. In 1937?

A. Here and yonder.

Q. 1936?

A. I was piddling around.

[fol. 48] Q. 1395?

A. I was at home sick.

Q. 1934?

A. I don't know where I worked in 1934.

Q. In 1933?

A. I couldn't tell you.

Q. In 1932?

A. I still don't know.

Q. 1931?

A. I don't know.

Q. 1930?

A. I worked so many different places, I couldn't tell you where I did work.

Q. 1929?

A. I don't know.

Q. 1928?

A. Piddling around.

Q. 1927?

A. I wasn't here.

Q. Where were you?

A. In McGehee, Arkansas.

Q. Where did you work in 1926?

A. I was in McGehee.

Q. In 1925?

A. I was with my father and mother some place.

Q. In 1924?

A. I was with them.

Q. In 1923?

A. I was with them.

Q. 1922?

A. I was with my parents until a few years ago.

Q. You were born in 1907?

A. I sure was.

Q. Where were you in 1921?

A. Somewhere areound here. My memory is not that long.

Q. Where were you in 1920?

A. Around in Arkansas somewhere.

Q. In 1919, where were you?

A. In 1919, I still wasn't working.

Q. In 1918?

A. Piddling.

[fol. 49] Q. As a matter of fact, you haven't worked for the Southern Cotton Oil Company 22 years, have you?

A. Not steady.

Q. Tell me how much time in the past 22 years you have been with the Southern Cotton Oil Company?

A. I have been with them quite a while. As I told you in the beginning, I wasn't with them steady for 22 years.

Q. You mean that 22 years ago, you began working there and you were absent for 20 years and went back?

A. I went to work back longer than that.

Q. How many times have you been arrested?

Mr. Robinson: I object to that, may it please the Court.

The Court: Objection sustained.

Q. I believe you testified on direct examination that you killed Walter Campbell in self defense?

A. I don't know whether I did or not. I don't know whether I killed him or not. I left the man standing on the street. He was standing on his feet in the driveway.

Q. How many times did you cut him?

A. I don't know, sir.

Q. Did you cut him?

A. I imagine I did. I had to do something to get him off of me.

Q. How much do you weigh?

A. I haven't weighed in quite a while, but the last time I weighed 187 pounds.

Q. What did Walter Campbell weigh?

A. I don't know.

Q. Wasn't he smaller that you?

A. I don't know—I couldn't tell you, because I don't know. I wouldn't know Campbell if he would come up here right now.

Q. After you killed Campbell, what did you do?

A. After I killed Campbell? I can't say whether I killed him or not. I don't know whether I killed him or not.

Q. Were you injured, Otha?

A. I sure was. I laid in the Baptist State Hospital for 17 days and I lost blood all night down in the City Hall.

Q. What color shirt did you have on the day of this killing?

A. I think I had on a blue shirt.

[fol. 50] Q. Is there blood on the shirt?

A. I don't know—I had on an overcoat.

Q. Did you bring the shirt into court?

A. I wore it—I had on the same clothes when they picked me up—I never did change clothes.

Q. After you killed Campbell, how far did you walk?

A. I walked from 9th and Broadway home.

Q. How far is that?

A. Nine or ten blocks or more.

Q. Then you went to the jail?

Q. Yes, sir, the plain clothes officers picked me up at home.

Q. You went to jail?

A. Yes, sir.

Q. And you lost blood at the jail.

A. Yes, sir, all night.

Q. Who was your doctor at the jail?

A. There wasn't no doctor at the jail.

Q. You didn't call one?

A. I couldn't get one—they wouldn't give me one at the jail.

Q. They wouldn't give you one at the jail?

A. No, sir.

Q. When did you go to the hospital, Otha?

A. When did I go to the hospital?

Q. Yes.

Q. I went to the hospital on the 27th about 1:00 o'clock—the 27th of December last year.

Q. How did you go down there?

A. A lawyer across the street tiik me in his automobile.

Q. Who paid your hospital bills?

A. The Southern Cotton Oil Company.

Q. You didn't pay it?

A. I was disabled to pay it.

Q. You were injured, were you, when you went to the hospital?

A. I sure was.

Q. After you killed Campbell, you were injured?

A. I don't know whether I killed Campbell, or not.

Q. He is not living?

A. Someone else could have done it—it didn't have to be me.

[fol. 51] Q. After you went to the hospital, how long was it before a doctor treated you?

A. It was the next day. Dr. Shuffield treated me at the Baptist Hospital.

Q. How soon after you arrived at the hospital?

A. I guess about an hour after I arrived.

Q. You were in the hospital 17 days?

A. I were.

Q. During the 17 days you were in the hospital, was there ever one day you had as much as one degree of temperature above or below normal?

A. I don't know, sir. I don't know what the doctors' and nurses' thermometer showed, but I know I suffered.

Q. You were suffering?

A. I know I suffered.

Mr. Robley: That is all.

Witness excused.

Bishop Jackson (CM), a witness called by the State, after being first duly sworn, testified as follows:

Direct examination.

By Mr. Robinson:

Q. Your name is Bishop Jackson?

A. Yes, sir.

Q. Bishop, were you working at the Southern Cotton Oil Company on the 17th day of last December, the time the men went out on strike?

A. Yes, sir.

Q. Did you go out on strike?

A. Yes, sir.

Q. Did the strikers put up a tent as headquarters near the Company's plant down there?

A. Yes, sir.

Q. On the 26th day of last December, the day after Christmas, did you go down to that tent that morning?

A. Yes, sir.

Q. How did you get down there?

A. I was standing on 9th and Main and a boy come down there and asked me to go down there with him in a car and [fol. 52] I went with him. He said he heard the oil mill was going to start the next day and he wanted me to go with him.

Mr. Schoggen: I object to that, your Honor.

The Court: Objection sustained.

Q. Did you see Jessie Bean down there that morning?
A. Yes, sir.
Q. What about Roy Cole?
A. He was not there. I didn't see him.
Q. What position did Jesse Bean hold in your union?
A. I don't know. He was one of the officers.
Q. Was Louis Jones one of the officers?
A. Yes, sir.
Q. Did those two defendants say anything with reference to what they were going to do that afternoon?
A. Yes, they said they were going back down there at 12:00 o'clock.

Mr. Schoggen: We object to that, if the Court please.
The Court: He confined it to these two defendants. The defendants objected to the above ruling of the Court and at the time asked that their exceptions be noted of record, which was accordingly done.

A. He said they were going to talk with them about 12:00 o'clock and see about getting them to quit and if they didn't, what they would do.
Q. Were they going to whip them?
A. Yes, sir.
Q. Was that when they were supposed to get off from work that afternoon?
A. They was supposed to go down at 12:00 o'clock and talk with them.
Q. When were they going to do the whipping?
A. They didn't say when they was going to do the whipping.
Q. You left there that morning?
A. Yes, sir.
Q. Did you go on back home?
A. Yes, sir.
Q. On West 9th Street?
A. Yes, sir.
Q. Did you go back down there that afternoon?
A. Well, I was on my way to eat and I met Campbell on 9th and Main.
[fol. 53] Q. You met Walter Campbell on 9th and Main?
A. Yes, sir, sitting on a streetcar and he asked where I was going and I told him I was going to eat supper. He

said he was going down to the tent and asked me to go with him.

Q. That was late in the afternoon?

A. Yes, sir.

Mr. Schoggen: We object to that conversation.

The Court: Who were you talking to?

Witness: To Campbell.

Mr. Robinson: I will withdraw the question, may it please the Court.

Q. You did see Campbell there?

A. Yes, sir.

Q. Did you and Campbell get on the streetcar?

A. Yes, sir.

Q. And went to the end of the streetcar line?

A. We went to 9th and Thomas where it turns.

Q. Where did you go from there?

A. I went on to the Cafe.

Q. Did Campbell go on to the cafe with you?

A. Yes, sir.

Q. Did he wait there until you got through eating?

A. Yes, sir.

Q. Then where did you go?

A. When I got through eating, we walked out and I said, "I have got to go home" and he said, "No, we will go on down here."

Q. You can't tell about any conversation. When you got through eating, you went where?

A. I went as far as the railroad with Campbell.

Q. When you got to the railroad, you stopped on the corner?

A. Yes, sir.

Q. Is the Southern Cotton Oil Company's plant directly across the street from where you were?

A. Yes, sir, angling across the street.

Q. You waited on the corner?

A. Yes, sir.

Q. Did Campbell leave?

A. Yes, sir, he went on down to the tent.

[fol. 54] Q. Who was there on the corner with you while Campbell was gone?

A. Louis Jones and two or three others—I forget their names.

Q. Louis Jones and two or three others?
A. Yes, sir.
Q. You waited there until Campbell came back?
A. Yes, sir.
Q. Who came back with Campbell?
A. Robert Brooks.
Q. When did Cole come up?
A. Cole came up later.
Q. Cole came up later. That is the defendant, Roy Cole?
A. Yes, sir.
Q. All right, now, Campbell and Brooks came on back?
A. Yes, sir.
Q Where was Jessie Bean at that time?
A. He was down the street about half a block away.
Q. He had been up there?
A. He had been up there, but he had gone.
Q. Was he up there?
A. Yes, sir.

Mr. Schoggen: I submit that is very, very leading.
The Court: Yes, it is leading.

Q. Did you see these boys come out of the plant that had not gone out on a strike?
A. Yes, sir.
Q. What did they do?
A. They came up to where you catch the bus and stood there a few minutes and came across the street.
Q. They were coming toward the car line?
A. Yes, sir.
Q. The very carline you came up on?
A. Yes, sir.
Q. Was anything said:
A. One of the boys said, "We want to talk to you."
Q. Do you know which one it was that said that?
A. No, sir.

Mr. Schoggen: We object to that, if the Court please.
The Court: Objection sustained.

A. The boy walked on and said "We don't have time to talk."
[fol. 55] Q. That is what the boys that came from the mill said—they said "We don't have time to talk?"
A. Yes, sir.

Q. Did they continue on walking?

A. Yes, sir.

Q. What happened then?

A. Later they went into a tussle.

Q. Did the group there follow them up?

A. No, sir, after they went into a tussle, I passed on by them and caught the car.

Mr. Schoggen: We object to that.

The Court: Connect it up with the charge in the information, if you expect to do so. Who was it that was in this contest or tussle?

Mr. Robinson: I don't propose to prove that by this witness.

The Court: Is that what you expect to prove by other witnesses?

Mr. Robinson: No, sir that is my last witness.

The Court: There wasn't any other tussle there but the one between those two?

Witness: That is the only one I seen.

The defendants objected to the above ruling of the Court and at the time asked that their exceptions be noted of record, which was accordingly done.

Mr. Robinson: No further questions.

Cross-examination.

By Mr. Schoggen:

Q. If I understand you correctly, in answer to the question by the court, you mean to testify that the tussle you saw was Otha Williams and Walter Campbell?

A. Yes, sir.

Q. You didn't see either one of these defendants in any tussle?

A. No, sir, I did not.

Q. You didn't see them encouraging any tussle?

A. No, sir, I did not.

Q. When you were down there that morning at the tent, was Campbell there then?

A. No, sir, he wasn't there.

[fol. 56] Q. He wasn't there?

A. No, sir.

Q. He wasn't present and down there when they were talking about planning to talk to the boys who were still working?

A. No, sir.

Q. As far as you know, he didn't know anything about that?

A. As far as I know.

Q. What time of day did you first run into Campbell?

A. I imagine it was around 4:00 or 4:30.

Q. That was the first time you had seen him all day?

A. Yes, sir.

Q. You say these men that were still working, Otha Williams and the others of the bunch, all came out together from the plant?

A. They all came across the street together.

Q. They all came across the street together?

A. Yes, sir.

Q. I understood you to say they first stopped over where the bus stopped.

A. That's right.

Q. You don't know why they didn't catch the bus there?

A. No, sir.

Q. But they didn't catch the bus and came on across the street to where the strikers were?

A. Yes, sir, across to the carline.

Q. Across to the carline?

A. Yes, sir.

Q. That tussle you spoke about between Otha Williams and Walter Campbell was right in front of Andrews' Grocery Store there, which is something like 100 yards West of the railroad track and it is quite a little distance from the Southern Cotton Oil Mill's plant, isn't it?

A. Yes, sir.

Q. Something like a block or a half of a block?

A. About half a block.

Q. About half a block?

A. Yes, sir.

Q. What time of day was it when this tussle occurred between Walter Campbell and Otha Williams?

A. I don't know—it was about dark, but it wasn't so you couldn't see good.

[fol. 57] Q. It wasn't pitch dark?

A. No, sir.

Q. But it was getting dark or dusk at that time?

A. Yes, sir.

Q. Where did you live at that time?

A. On 9th and Pulaski—1306 West 9th Street.

Q. 1306 West 9th Street?

A. Yes, sir.

Q. Did you go down there to that tent frequently, Bishop?

A. I was down there two or three times.

Q. You were not working at the time—you were out on strike?

A. Yes, sir.

Q. Jessie Bean was one of the officers in the local union?

A. Yes, sir.

Q. Did you ever hear him and the other boys in charge of the picketing down there caution all the pickets to be careful and not have trouble with anybody?

A. I heard them tell them not to carry any knife or any kind of weapon.

Q. You heard them tell them not to carry any knife or any kind of weapon?

A. Yes, sir.

Q. They had a copy of this Act 193 posted in the tent down there?

A. I haven't been down there at night.

Q. You haven't been down there at night?

A. No, sir.

Q. Well, you have been down there in the daytime?

A. Yes, sir.

Q. And you know, as a matter of fact, they were all warned by these defendants not to have any trouble?

A. Yes, sir.

Q. That is true, isn't it?

A. Yes, sir.

Q. Did you ever at any time hear either one of these defendants encourage Campbell or anybody else to have any trouble?

A. No, sir, I did not.

Q. Now, Bishop, in coming away from the plant down there when these workers were leaving, they could cross to the North side of 9th street without crossing any picket line, couldn't they?

A. Yes, they could.

[fol. 58] Q. And in that way they could have come up to the carline without crossing any picket line or encountering these strikers, couldn't they? I mean without running into the strikers—the strikers were over in front of Andrews' grocery store?

A. They were at the railroad there.

Q. At the railroad?

A. Yes, sir.

Q. And these boys all came out together?

A. They all came across together.

Q. They all came across together?

A. Yes, sir.

Q. Did you see three of them wait there on the other side of the railroad track while Willie Brown and Otha Williams went back to unload some seed?

A. I didn't pay that any attention.

Q. You didn't pay that any attention?

A. But I knew they all came across together.

Q. You know they all came across together?

A. Yes, sir.

Q. You are also indicted and charged with violation of this Act aren't you, Bishop?

A. I don't know what I am charged with.

Q. You just know that you are charged with something?

A. Yes, sir.

Q. Anyway, you are a defendant and your case was set for today also?

A. I don't know—I had a subpoena—I guess it was.

Q. You are at liberty now under bond on that charge, aren't you?

A. I suppose so.

Q. When was the last time you talked to Mr. Robinson about this matter?

A. I haven't talked with him but twice since it happened.

Q. Have you talked with him since the last trial?

A. No, sir, I haven't.

Q. You came in and testified for the state at the last trial, the last time these boys were tried?

A. I think so—that was back in the winter.

Q. You were called by the state as a witness against these boys at that time and testified for the state?

A. Yes, sir.

[fol. 59] Q. As a matter of fact, you don't expect the state to ever try you, do you?

A. I don't know, sir.

Q. Well, at least you hope they don't, don't you?

A. Sure.

Mr. Schoggen: That is all.

Redirect examination.

By Mr. Robinson:

Q. You say you were down at the tent that morning?

A. Yes, sir.

Q. When these defendants here, Louis Jones and the others, were in a discussion and were talking about talking to the men that were working?

A. Yes, sir.

Q. And they agreed that if they didn't talk right, they were going to whip them?

A. Yes, sir.

Q. With *er*ference to going to the car track, is there any way those men that were working could have gone to the carline without passing by where the strikers were waiting for them there?

Q. They couldn't have come any other way.

Q. They had to go up 9th Street?

A. Yes, sir.

Q. That is where the strikers were waiting for*m* th*a*m at the corner of 9th Street and Railroad?

A. That's what I understand.

Q. There wasn't any pciket line over where you were?

A. No, sir.

Q. This defendant, Cole, wasn't walking picket?

A. No, sir.

Q. Bean wasn't walking picket?

A. No, sir.

Q. Jones wasn't walking picket?

A. No, sir.

Q. Campbell wasn't walking picket?

A. No, sir.

Q. And the men that were working there at the plant had to come right by where the strikers were waiting there in order to get to the carline?

A. That's right.

[fol. 60] Q. They came by across over there and were attending to their own business?

A. They were walking on by, yes, sir.

Q. They didn't speak to anybody?

A. No, sir.

Q. They were going on?

A. Yes, sir.

Q. Until somebody in the strikers' group said something to them?

A. That's right.

The Court: Tell the jury whether or not Campbell was present at the time you heard this statement made by these defendants?

Witness: No, sir, he was not present.

Mr. Schoggen: As I recall, he previously testified that Campbell wasn't down there at all.

Q. You saw Campbell late that afternoon on 9th and Main?

A. That's right.

Q. And you and Campbell got on the streetcar and went on back down there?

A. Yes, sir, I went to eat and he went to talk to them.

Q. He didn't go down there to eat, did he?

A. No, sir.

Mr. Robinson: That is all.

Witness excused.

Mr. Robinson: The State rests.

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MOTION FOR DIRECTED VERDICT, DEMURRER TO THE EVIDENCE AND DENIAL THEREOF

Thereupon, the state having rested its case, the following motion was presented to the court in chambers:

Mr. Schoggen: At the close of the testimony on behalf of the State, the defendants, and each of them, demur to the evidence and move for instructed verdicts of not guilty. There is no evidence other than the mere fact that they had a fight that it was the result of a labor dispute or that Williams [fol. 61] was by force and violence prevented from engaging in a lawful vocation; and, second, there is a total failure to prove that Roy Cole, Louis Jones and Jessie Bean in the County aforesaid did on the 26th day of December, 1945, unlawfully and feloneously, acting in concert with each other, promote, encourage and aid such unlawful assemblage. That would date back to the assemblage where Campbell was killed. The most that could be said by the State on that is there is some testimony that Bean and Louis Jones were up there at the place of the altercation. I don't believe there is any testimony that Roy Cole was there. There is no evidence to connect them, or either of them, with any act of encouragement, promotion or aid. In fact, all of the testimony is to the contrary. It gets down to where the most that can be said for the State's evidence is that at least two of them were there on the street. They haven't proved that Campbell was ever down there at the tents where these defendants or at least part of them were.

The Court: You proved that they were warned not to wear weapons or commit any acts of violence. The State's witness, Bishop Jackson, testified that he was down at the tent where they gathered together and heard two of the defendants, Bean and Jones, make the statement that they were going to talk to the boys, and if they didn't talk right, they were going to give them a whipping. There was encouragement, as viewed by the State. That is the first element of a conspiracy or agreement which was encouraged by these two defendants, and as far as the culmination is concerned, which is the next ingrediant in the unlawful assemblage, Cole walked around with a stick and came up behind these other men and was there at the time of the commission of the very thing the other two men said in the presence of Jackson that would take place.

Mr. Schoggen: There would have to be some connection.

The Court: The connection would have been in the act. He was saying it to somebody—he told it to Jackson. Now there must be some evidence that they co-operated or encouraged in the performance of the ultimate act which the statute makes a part of the assmeblage. The court will overrule the motion for a directed verdict and overrules the oral demurrer to the evidence.

[fol. 62] The defendants objected to the above ruling of the court and at the time asked that their exceptions be noted of record, which was accordingly done.

* * * * * * *

Thereupon, the defendants, to sustain the issues in their behalf, introduced the following testimony, to-wit:

Jessie Bean (CM), one of the defendants, after being first duly sworn, testified as follows:

Direct examination.

By Mr. Schoggen:

Q. Your name is Jessie Bean?

A. Yes, sir.

Q. You are one of the defendants charged here, is that right?

A. Yes, sir.

Q. How old are you, Jessie?

A. 39.

Q. You are 39 years old?

A. Yes, sir.

Q. Where do you live, Jessie?

A. In the East end of town, right at the airport.

Q. Where do you work?

A. For the Hamilton Stave Mill.

Q. You work for the Hamilton Stave Mill?

A. Yes, sir.

Q. Did you formerly work for the Southern Cotton Oil Company?

A. Yes, sir.

Q. How long did you work for the Southern Cotton Oil Company?

A. About 14 years—I started in 1931.

Q. About 14 years.

A. Yes, sir.

Q. Were you with the others who went out on strike there on December 17th last year?

A. Yes, sir.

Q. About how many of your organization went out on strike, Jessie?

A. About 112.

[fol. 63] Q. About 112?

A. Yes, sir.

Q. And how many remained on the job?

A. Five.

Q. Five?

A. Yes, sir.

Q. Now, do you have any official position with the local union?

A. No, sir, I was just appointed on the committee to negotiate a contract.

Q. You were on the appointed committee to negotiate a contract?

A. Yes, sir.

Q. That organization you belong to is a CIO affiliate, isn't it?

A. Yes, sir.

Q. When you went out on strike there on December 17th, were there any arrangements made about picketing the plant down there?

A. Yes, sir.

Q. What arrangements were made and what did you have to do with it?

A. We had banners to carry.

Q. For the pickets to carry?

A. Yes, sir.

Q. Did you carry a banner?

A. No, sir, just only to help to carry them if someone would be out—I would help carry a banner.

Q. Did you have a headquarters established down there to work from.

A. Yes, sir, we had a fire and a tent back of the Southern Cotton Oil Company.

Q. How far back of the Southern Cotton Oil mill did you have that tent?

A. I would say about a block from the fence.

Q. It wasn't on the Southern Cotton Oil Mill's property?

A. No, sir.

Q. What did you have on these banners?

A. Well, we had 60 cents minimum wage, 8 hours a day. We were asking for a ten percent increase.

Q. Do you mean ten percent or ten cents?

A. Ten cents.

Q. Ten cents on the hour to make it sixty cents?

A. Yes, sir.

[fol. 64] Q. And eight hours a day?

A. Yes, sir.

Q. And that was the contract you were trying to get?

A. Yes, sir.

Q. And that is what you had on this banner?

A. Yes, sir.

Q. What was the purpose of picketing and waving these banners and carrying these banners outside of the plants?

A. That is for public opinion. A guy would come by and see that we was carrying banners trying to get better wages and better conditions.

Q. Jessie, did you stay at the tent a good part of the time?

A. Yes, sir.

Q. Who else would be at the tent from time to time?

A. Just different ones.

Q. Different pickets?

A. Yes, sir.

Q. And others who were on strike, is that what you mean?

A. Yes, they would visit us and help us out.

Q. What do you mean "help us out"?

A. Help us carry the banners if someone would be out.

Q. In other words, they would furnish relief?

A. Yes, and help to keep the fires.

Q. Do you remember the occurrence on the 26th day of December of last year when Walter Campbell was killed by Otha Williams?

A. I heard them say about it.

Q. You didn't see it?

A. No, sir.

Q. That happened where with reference to the railroad and plant there, if you know?

A. Well, no, sir, I do not know.

Q. You don't know?

A. No, sir, I never was up there.

Q. You never was up there?

A. No, sir.

Q. When did you first learn about it, Jessie?

A. Well, I guess it was about 6:00 o'clock.

Q. You learned about it about 6:00 o'clock after it had already happened?

A. Yes, sir.

Q. Was it dark then?

A. Yes, sir.

[fol. 65] Q. Where were you when you learned about it?

A. At the tent.

Q. Now it is charged here that you and Roy Cole and Louis Jones promoted, encouraged and aided an unlawful assemblage up there, as a result of which this fight occurred.

Tell the jury whether or not you ever encouraged anybody in any act of violence, Jessie?

A. No, sir, we did not. We was always instructed—in other words, we had a law, a form of that anti-violence law up in the tent and it was read over to us and different ones would read it over and see that they half-way understood it and read it to the others that we were to picket in peace at all times.

Q. Did you ever encourage Walter Campbell in any act of violence?

A. No, sir.

Q. Or anybody else?

A. No, sir.

Q. Did Louis Jones or Roy Cole, as far as you know?

A. No, sir.

Q. You spoke about this anti-violence Act. Who furnished you that Act that was posted in the tent at your headquarters?

A. Mr. Henderson.

Q. Who is Mr. Henderson?

A. That's our director.

Q. CIO director?

A. Yes, sir.

Q. When did he do that?

A. It was on December 17th, the day of the strike.

Q. That is the day you first went out on a strike?

A. Yes, sir. He had us come over to the hall and read it over to us and gave us one to carry with us and put in our tent.

Q. And Walter Campbell was instructed along with the others, is that correct?

A. Yes, sir.

Q. Did you have any reason or any way to know that he was going to have any trouble with Otha Williams or anybody else?

A. No, sir.

Q. You didn't know anything about it until it was over with?

[fol. 66] A. About 6:00 o'clock.

Q. About 6:00 o'clock?

A. Yes, sir.

Q. Now, you were asking for eight hours a day, is that right?

A. Yes, sir.

Q. What were you working at that time?

A. Sometimes 12 and 16 and 24 hours.

Q. 24 hours?

A. Yes, sir.

Q. 12, 16 and 24 hours?

A. Yes, sir.

Mr. Schoggen: Take the witness.

Cross-examination.

By Mr. Robinson:

Q. Those weeks you worked 24 hours a day, you would make $100 a week?

A. No, sir.

Q. You were making fifty-five cents an hour?

A. Yes, sir.

Q. How much would you make the days you worked 24 hours?

A. (No answer).

Q. You say sometimes you worked 24 hours a day. How much would you make when you worked 24 hours?

A. We got paid by the week.

Q. You got paid once a week, but you were paid by the hour?

A. Yes, sir.

Q. Those days you worked 24 hours, how much would you earn that day?

A. You can figure it at 55 cents an hour.

Q. 24 hours at 55 cents an hour would be how much?

A. I will have to figure it.

Q. It would be a little over $13.00 wouldn't it?

A. Yes, sir.

Q. Then if you worked six days at that, it would be pretty close to $100 for that week wouldn't it?

A. I imagine it would.

Q. How often did you make that much?

A. How often?

[fol. 67] Q. Yes, how often?

A. I did it pretty often. Lots of times I would get off at 3:00 o'clock and at 12:00 o'clock they would come and get me out of bed.

Q. You would be paid for all of it?

A. Yes, sir, straight time.

Q. On overtime, you would get time and a half?

A. No, sir.

The Court: I am going to have to limit you gentlemen on these collateral matters.

Q. What position did you hold with the union?

A. I was appointed on the committee to negotiate a contract.

Q. You were appointed on the committee to negotiate a contract?

A. Yes, sir.

Q. What were you doing down at the tent?

A. We was down there for keeping the fires and sometimes we would walk picket.

Q. What time did you go down there on the 26ty of December?

A. We went every morning.

Q. For what?

A. To see if any fire was down and if anyone on the picket line was off, I would go walk.

Q. You went down there every morning?

A. Yes, sir.

Q. You weren't negotiating a contract down in the tent, were you?

A. We was on a strike.

Q. You say your job was to negotiate a contract. Were you negotiating a contract in that tent?

A. Maybe I misunderstood you—I thought you asked me what podition did I hold.

Q. You were negotiating a contract?

A. I say I was on the appointed committee.

—. You were on the appointed committee to negotiate a contract?

A. Yes, sir.

Q. You weren't holding negotiations in the tent, were you?

A. We was on strike down there—that's where we made fires.

[fol. 68] Q. For what?

A. To keep warm.

Q. Who?

A. The pickets.

Q. You didn't walk the picket line?

A. If anybody wasn't up there, I did.

Q. You were in charge of the pickets?

A. No, sir, there wasn't anybody in charge. We all was on strike and was trying to keep the picket line going.

Q. Who had charge of the picket line?

A. The whole group was.

Q. Everybody on strike had charge of the picket line?

A. Yes, sir.

Q. Who walked the picket between the railroad on this day, the 26th day of December?

Q. You mean in the evening?

Q. Yes.

A. L. C. Johnson.

Q. Who put him on there?

A. He put himself on there.

Q. He went to walking picket without anybody telling him to?

A. If there wouldn't be nebody there.

Q. Who else was walking picket?

A. Carl Russell.

Q. Were you walking picket?

A. No, sir.

Q. Why?

A. Because there was two on it.

Q. That is all you ever used?

A. No, sometimes we used more than two.

Q. On this particular day, two men were walking picket?

A. I couldn't tell you who was there at the time.

Q. You weren't walking picket?

A. No, sir.

Q. What were you doing up there?

A. Where?

Q. At the corner of the Southern Cotton Oil Mill where the trouble occurred and where Walter Campbell was killed?

A. I wasn't up there.

Q. Where were you?

A. Down at the tent.

[fol. 69] Q. What were you doing at the tent?

A. Keeping the fire down there.

Q. Did you keep the fire down there all day long?

A. Yes, sir, until 11:00 o'clock.

Q. Did you keep the fires?

A. All of us.

Q. Why didn't you come on up there?

A. Up where?

Q. Where this trouble occurred. You knew it was going to happen didn't you?

A. No, sir, I did not.

Q. You and Louis Jones and the others agreed down there in the tent that that was what you were going to do that afternoon?

A. We had instructions in the tent for them not to have any kind of fight and not to even carry weapons of any kind and we tried to abide by the law.

Q. Abide by the law that if these *d*en didn't quit, you were going to whip them?

A. No, sir.

Q. You say you weren't there?

A. No, sir.

Q. You say you don't know anything about it at all?

A. No, sir, I sure don't.

Q. You were down at the tent?

A. Yes, sir.

Q. Did Campbell come down to the tent a short time before this happened?

A. I didn't see him.

Q. Was Robert Brooks down at the tent?

A. No, sir.

Q. Who else was at the tent?

A. Walter Jackson.

Q. What time was that?

A. I guess right after 5:15.

Q. Walter Jackson was there?

A. Yes, sir.

Q. Who else?

A. That was all—he and I.

Q. What were you doing there?

A. We were keeping the fires.

Q. What kind of fires did you have?

A. Wood.

[fol. 70] Q. Did you just constantly shove wood in the stove?

A. No, sir.

Q. You went down there that morning to see about the fires?

A. We made the fires in the morning.

Q. You were there in the morning—you and Louis Jones?

A. Yes, sir.

Q. Was Roy Cole there?

A. Yes, sir.

Q. Who else was there that morning?

A. I couldn't tell you.

Q. But you remember you three were there?

A. I couldn't tell you just who all was there.

Mr. Robinson: That is all.

Witness excused.

Louis Jones (CM), one of the defendants, after being first duly sworn, testified as follows:

Direct examination.

By Mr. Schoggen:

Q. Your name is Louis Jones?

A. Yes, sir.

Q. You are one of the defendants in this case?

A. Yes, sir.

Q. How old are you?

A. I am 44 this last October.

Q. You are 44?

A. Yes, sir.

Q. Where do you live, Louis

A. I live at 1910 Summit.

Q. What do you do?

A. I works at the Little Rock Furniture Company.

Q. You work at the Little Rock Furniture Company?

A. Yes, sir.

Q. How long have you been working there?

A. I have been working there since September, I think it was.

Q. Did you formerly work for the Southern Cotton Oil Company?

A. Yes, sir, I did.

[fol. 71] Q. Louis, how long did you work there?

A. For the Southern Cotton Oil Company?

A. Yes.

A. I worked there about a year—to the day we came out on strike.

Q. When did you come out on strike?

A. We come out on strike on the 17th of September.

Q. How many came out on strike?

A. It was 112 came out.

Q. And left about five in the plant?

A. Yes, sir.

Q. There wasn't engough left to operate the plant, was there, Louis?

A. No, sir.

Q. Now, Louis, did you have any official position with the organization you belonged to there?

A. Yes, sir, I was appointed chairman of the group.

Q. You were appointed chairman. By "group," you mean the employees of the Southern Cotton Oil Company?

A. Yes, sir.

Q. You were chairman of that group?

A. Yes, sir.

Q. Louis, in regard to the picketing there and the tent and all, you have heard Jessie Bean testify about that?

A. Yes, sir.

Q. Is that substantially correct about where you had the tent and all?

A. Yes, sir that is substantially correct.

Q. Did you have anything to do with keeping the headquarters?

A. No, sir, I didn't have anything to do with keeping the headquarters. They way it was, it was a free issue to everyone and if they would go out, one would relieve the other toting the picket signs, and at that time, I had been gone about a week. I left the night of the 17th. I got a message that afternoon that I lost my mother at Clarksdale, Mississippi, and I went down there that night and I came back on the 26th of December.

Q. You came back on the 26th of December, the day this trouble occurred?

A. Yes, sir. I got in here between 6:30 and 7:00 o'clock that Monday morning.

[fol. 72] Q. Did you go down to the tent there?

A. When I got off the bus, I called Mrs. Morris at the office and she told me to go on down and help the boys out. It was pretty cold.

Q. It was pretty cold?

A. Yes, sir.

Q. What kind of fires did you have down there?

A. We would buy wood and build a fire.

Q. Did you have a stove?

A. Yes, sir, had a heater. We would make coffee for the walkers and sandwiches.

Q. Did you see this fight between Walter Campbell and Otha Williams?

A. No, sir, I didn't see it. I was at least a half block from where the fight was at the time it happened.

Q. Which way?

A. Just across the street in front of the ice plant. Russell was toting pickets that afternoon and I had been on that day and I stayed on the line the balance of the evening and at 6:00 o'clock these men was supposed to change and there wasn't no one to relieve him and I taken his place.

Q. Do you know when this trouble occurred over there?

A. No, sir, I didn't. It was so dark, you couldn't see what was happening. You could just see the men together.

Q. Had you seen the five employees come out of the plant?

A. Yes, sir, I saw them.

Q. How did they ordinarily leave there—by bus or did they go up to the street car across the track?

A. Usually I hadn't paid any attention to how they had been leaving, but usually at the time we was working, we would come out and catch the bus on the corner.

Q. The airport bus?

A. Yes, sir. I hadn't been down there before the strike.

Q. You had been away up until that day?

A. Yes, sir.

Q. You know Walter Campbell?

A. Yes, sir, I knew him.

Q. He was on strike too, wasn't he?

A. Yes, sir.

Q. Now, you are charged here with having promoted, encouraged and aided him in an unlawful assemblage. Did you ever talk to Walter Campbell about doing any unlawful act?

[fol. 73] A. No, sir, I didn't have that much to say to him, and that day previously, I didn't see him previously.

Q. All during the 26th day of December, you hadn't seen him?

A. No, sir, I had not been there but once and that was in the morning.

Q. Did you see him that evening about 5:30 or 6:00 o'clock?

A. I saw him off at a distance. I wasn't close enough to say anything to him. I was on picket when he come along and when he crossed the street going on down the railorad.

Q. As chairman of your group, did you give the pickets any instructions about how they should conduct themselves on the picket line?

A. Yes, sir, it was given before I left and that morning when I come back, I was still telling them. There wasn't anyone at the tent that morning but Walter Jackson and Jessie Bean was there. He had to come down town to the labor office.

Q. You mean to tell the jury you did not promote, encourage or aid in any unlawful actions?

A. No, sir, I did not.

Q. On the contrary, you tried to avoid it?

A. Yes, sir.

Q. Did any of your pickets on strike carry knives?

A. No, sir, they was advised over and over — not carry any kind of weapons.

Q. By whom were you advised?

A. By Mr. Henderson and Mrs. Morris and also Mr. Stevens.

Q. Did you have pointed out to you the provisions of this anti-violence Act you are charged with violating?

A. Yes, sir, after they read it, they announced it and told us how to do and act on the line.

Q. And you passed that information on to your other fellow workers?

A. Yes, sir.

Q. And you mean to tell the jury you did not encourage Campbell or anybody else?

A. No, sir, no one at all.

Q. Did you have any reason to believe there was going to be trouble there that afternoon?

A. No, sir, I didn't have the least idea there was going to be any trouble.

[fol. 74] Q. You were over across the street by the ice plant?

A. Yes, sir.

Mr. Schoggen: Take the witness.

Cross-examination.

By Mr. Robinson:

Q. The only thing you were going to do was just whip them. Is that right?

A. Not as I knows of.

Q. And they all got away but Otha and he didn't whip so easy. You say you had just come from Clarksdale, Mississippi?

A. I had, yes, sir.

Q. What time did you leave from down there?

A. Sunday evening.

Q. Sunday evening what time?

A. I left there about 8 o'clock Sunday evening.

Q. About 8:00 o'clock Sunday evening?

A. Yes, sir.

Q. On the bus?

A. Yes, sir.

Q. You rode the bus all night long?

A. No, sir, I got in Memphis about 10:00 or 11:00 o'clock and left out of Memphis about 1:30 or 2:00 o'clock—I don't know the exact time.

Q. You got in here between 6:00 and 7:00 o'clock in the morning?

A. Yes, sir.

Q. You didn't go home then?

A. Yes, sir, when I got off the bus, I went home and changed clothes.

Q. When was it you called up about the strike?

A. When I got off the bus, I went in the bus station and called.

Q. Before you did anything else?

A. Yes.

Q. Who did you call?

A. Called the office—Mrs. Morris.

Q. What was the purpose in calling there?

A. To see how they were getting along and if they was still carrying pickets.

[fol. 75] Q. You were very much interested—you were chairman of the strike?

A. Yes, sir.

Q. You called the CIO headquarters?

A. Yes, sir.

Q. That was the first thing you did when you got off the bus?

A. Yes, sir.

Q. Then you went on home?

A. Yes, sir.

Q. What did you do at home?

A. Changed clothes.

Q. You changed clothes?

A. Yes, sir.

Q. And then you went on down to the tent?

A. Yes, sir.

Q. You had been up practically all night?

A. Yes, sir.

Q. But you didn't go to bed or anything like that?

A. No, sir, not that day.

Q. You didn't go to bed that day at all?

A. No, sir.

Q. You had been traveling and had been up all night long and you went home and changed clothes and went down to the tent?

A. Yes, sir.

Q. You didn't go to bed at all?

A. No, sir.

Q. Why didn't you go to bed?

A. I wasn't sleepy.

Q. You had been up all night long, but you still were not sleepy?

A. No, sir.

Q. You didn't have any other motive in not going to bed except that you just were not sleepy?

A. No, I wasn't sleepy.

Q. What time did you get to the tent?

A. Between 9:30 and 10:00 o'clock.

Q. Was anybody there at that time?

A. Walter was there making a fire and shortly after we got there, Jessie came in.

Q. Jessie who?

A. Jessie Bean. He had to go to town to the labor office and I said "Who is on the picket line"; and he said [fol. 76] "Brother Humphrey" and he said he hadn't had any coffee and I could go and relieve him.

Q. There were 112 of you out on strike?

A. Yes, sir.

Q. You had been up all night long, but you couldn't get anybody else to tote the pickets. You said Jackson was there?

A. Yes, sir.

Q. And Bean was there?

A. Yes, sir.

Q. And wouldn't either of them walk it?

A. They had been walking.

Q. How long did you stay around there?

A. Just a few minutes.

Q. Where did you go then?

A. Back on the picket line.

Q. How long did you stay there?

A. All day.

Q. All day?

A. Yes, sir.

Q. All day long?

A. Yes, sir.

Q. Until late that evening?

A. Yes, sir.

Q. You weren't walking picket?

A. I wasn't toting a banner. As they would come in, they was supposed to be relieved and if there wasn't anybody there, I would take the sign and tote it until somebody would come.

Q. As a matter of fact, you and Jessie Bean were the main instigators and had a conference in the tent that morning and you agreed that you were going to talk to those men and if they wouldn't agree to quit, you were going to whip them?

A. No, sir.

Q. You were the one that called Otha Williams and told him you wanted to talk to him?

A. I didn't say anything.

Q. And he told you he was going home and you said "All right, boys" and gave a signal for them to gather in and they swarmed in like blackbirds?

A. No, sir.

Q. And Walter Campbell went in front of Otha Williams. You saw that, didn't you?

[fol. 77] A. No, sir.

Q. Where was Cole?

A. I don't know where Cole was. I didn't even see him, because that time of the evening was dark.

Mr. Robinson: That is all.

Witness excused.

Roy Cole (CM), one of the defendants, after being first duly sworn, testified as follows:

Direct examination.

By Mr. Schoggen:

Q. You- name is Roy Cole?

A. Yes, sir.

Q. Where do you live?

A. 902 Townsend.

Q. You are one of the defendants here?

A. Yes, sir.

Q. How old are you, Roy?

A. 41.

Q. Where do you work now?

A. Swift Cotton Oil Company.

Q. Did you formerly work for the Southern Cotton Oil Company?

A. Yes, sir.

Q. About how long did you work for the Southern Cotton Oil Company?

A. Since 1922.

Q. Since 1922, about 24 years?

A. Yes, sir.

Q. Have you worked there continuously since that time?

A. No, sir, I haven't. It just runs by season and I work there in the Fall of the year.

Q. You were with the other 112 that went out on strike on the 17th of December of last year?

A. Yes, sir. I was.

Q. Did you have occasion to be around the strike headquarters at the tent down there?

A. Well, Yes, sir, I would come around there practically every morning.

[fol. 78] Q. Why?

A. To see if there was any boys there to tote the banners and if there wasn't, I would carry it myself.

Q. You would help out?

A. Yes.

Q. You weren't working anywhere at the time, you were on strike?

A. Yes, sir.

Q. You are charged here, Roy, that you and Louis Jones and Jessie Bean promoted, encouraged and aided Walter Campbell in an unlawful assemblage, as a result of which Walter Campbell was killed by Otha Williams. Did you ever do anything to encourage Walter Campbell in doing any unlawful act?

A. No, sir, I didn't. I never seen Campbell from the 17th of December until 5:30 on the 26th of December.

Q. You dadn't seen him in the meantime at all?

A. No, sir.

Q. Were you down there at the tent on the 26th?

A. I was down there around 7:30.

Q. Was Campbell there?

A. No, sir, he wasn't.

Q. Where were you, Roy, when this fight came up between Walter Campbell and Otha Williams?

A. I was at the corner when they came out.

Q. When who came out?

A. When these other strikers came out.

Q. When the workers came out?

A. When the workers came out, yes, sir.

Q. That was Otha Williams and the other bu-ch with him?

A. Yes, those five boys.

Q. You were at the corner. What corner do you mean?

A. Right at the picket line.

Q. What were you doing there?

A. Well, I had to go up there every evening to see whether the boys were there with the banner or not and if any of them wanted to go get coffee or get something to eat, I would relieve them until they come back.

Q. What was the first thing that attracted your attention to a difficulty between Walter Campbell and Otha Williams?

A. Well, I don't know. When they come across there, I heard one of the boys tell them he wanted to speak to them and one said they didn't have time. Who it was, I don't know, and they turned and walked up the street. There [fol. 79] was seven or eight together. And when they got up in front of the store, they started fighting.

Q. Could you tell anything about who started the fight?

A. No, sir, it was about dark.

Q. How far away were you Roy?

A. I was across the street over there by the oil company, across the street from Andrews' store.

Q. Did you walk on up there?

A. I walked up across the street where I could see them fighting, but I didn't know who it was.

Q. Did you have any conversation with Willie Brown about him going on?

A. Yes, sir, I did.

Q. What did you tell him?

A. He had a coat on his arm and had his hand under his coat like this (indicating) and he kept making an attempt like he had a gun or something—I don't know whether he did or no—and I told him "Willie, if I was you, I would go on—I wouldn't be in this mess."

Q. Did you have anything to say to anybody else?

A. No, sir, I didn't.

Q. Do you know whether or not Willie Brown keeps a gun all the time?

A. I kept his gun in my locker two or three times.

Mr. Robinson: I object to that, may it please the Court.

Mr. Schoggen: I think it is competent. Willie Brown testified he didn't have a gun.

The Court: Was the foundation laid to interrogate the witness on this question? I don't think there was any definite foundation laid to impeach the witness, Willie Brown, on that point. Objection sustained.

The defendants objected to the above ruling of the Court and at the time asked that their exceptions be noted of record, which was accordingly done.

Q. That was the reason you told him to go on, because you thought he had a gun with him?

A. Yes, sir.

Q. And he did go on?

A. Yes, sir.

Q. What did you do, Roy?

A. I come on down by the ice plant then.

[fol. 80] Q. You mean to tell the jury you never did encourage any law violation whatever?

A. No, sir, I never did.

Q. What were the instructions of your officers down there with reference to violence in connection with the picket line on strike?

A. Mr. Henderson and Mrs. Morris and Mr. Stevens always told us from the beginning to picket peacefully and don't have no kind of violence.

Q. Did you and the others, who were more or less leaders in the movement, pass that information on to the rest?

A. Yes, sir.

Q. Something has been said about a stick you had with you?

A. Well, I had a walking cane.

Q. You had a walking cane?

A. Yes, sir.

Q. What kind of walking cane was it?

Q. Well, I don't know—about an ordinary cane like.

Q. Why were you carrying one?

A. Well, I just carried it all the time. I sprung my ankle one or twice and carried a stick along with me.

Q. You were not carrying it as a weapon?

A. No, sir, I never did think about nothing like that.

Mr. Schoggen: Your witness.

Cross-examination.

By Mr. Robinson:

Q. Roy, what were you doing down there at all?

A. Oh, I would go—down where?

Q. At that corner at that time?

A. I would go down there every evening.

Q. For what?

A. To relieve the boys on the picket line.

Q. You hadn't been on the picket line any that day?

A. No, sir, I hadn't. It was two or three days I didn't walk, but I had been there to see whether they was there or not.

Q. You saw Louis Jones there?

A. Yes, sir.

[fol. 81] Q. You saw Jessie Bean there?

A. I met Jessie Bean when I was coming down there. I was coming down to the picket line and Jessie Bean was going back.

Q. Where this trouble occurred, there wasn't any picket line over there?

A. I didn't see Jessie Bean over there. I met him a block away from there.

Q. You were right behind Walter Campbell and Robert Brooks?

A. I don't know about that—I didn't see them.

Q. Did you see them when they got in front of you?

A. No, sir, when I got there, they was there.

Q. What kind of stick did you have?

A. An ordinary walking stick.

Q. You say you sprained your ankle?

A. Yes, sir.

Q. When?

A. I don't know, once or twice.

Q. About 15 years ago?

A. I don't know.

Q. You didn't have a sprained ankle at the time this occurred. You don't ordinarily walk with a walking stick?

A. When something was wrong.

Q. There wasn't anything wrong with you then?

A. My ankle was hurting.

Q. The truth about it is you were standing there when those boys started across the street.

A. I had just walked up there.

Q. You had just walked up there?

A. That's right.

Q. And they were walking West going toward the car-line?

A. That's right.

Q. They were minding their own business?

A. That's right.

Q. And you heard one of them in your group of strikers say, "Wait a minute, we want to talk to you"?

A. I heard somebody say that.

Q. And Otha Williams said he didn't have time?

A. I don't know who it was, but somebody said they didn't have time.

[fol. 82] Q. And they kept walking and your group went up 9th Street?

A. They all went up 9th Street in a bunch.

Q. You told Willie Brown to go ahead on—that they wasn't after him?

A. Yes, sir, I did.

Q. How did you know they weren't after him?

A. Willie was across the street and they couldn't have been after him with him on one side of the street and *him* on the other.

Q. You know that they didn't object to him working there—you had heard it discussed?

A. They hadn't never said nothing about it.

Q. Answer the question. Didn't you hear them say they didn't object to Willie Brown working because he was on parole from the penitentiary?

A. No, sir, they never said that.

Q. How do you know?

A. Because he was on one side of the street and they was on the other.

Q. You told him to go ahead on that they weren't after him?

A. Yes, that is what I told him.

Mr. Robinson: That is all.

Witness excused.

ANDREW HUMPHREY (CM), a witness called by the defendants, after being first duly sworn, testified as follows:

Direct examination.

Questions by Mr. Robley:

Q. State your name to the jury.

A. Andrew Humphrey.

Q. Where do you live, Andrew?

A. 720 Foster, near the airport.

Q. How old are you?

A. 62.

Q. 62 years old?

A. Yes, sir.

[fol. 83] Q. Andrew, have you ever worked for the Southern Cotton Oil Company?

A. Yes, sir.

Q. How long did you work for them?

A. Four years.

Q. Four years?

A. Yes, sir.

Q. Were you working for them in December, 1945?

A. Yes, sir.

Q. Were you working for the Southern Cotton Oil Company on December 26, 1945?

A. I worked for them four years up until the strike come on.

Q. You worked for them four years up until the strike?

A. Yes, sir.

Q. Did you go out on that strike?

A. Yes, sir.

Q. You and how many other men?

A. I can't remember how many went out.

Q. Was there more than 100?

A. Something like that maybe.

Q. Andrew, on the 26th day of December, 1945, that was the day following Christmas, were you walking picket?

A. I walked from 6:00 o'clock until noon.

Q. Then where did you go?

A. I went home and at 3:00 o'clock I went to North Little Rock after me a grate for my coal stove.

Q. Then when did you come back to the Southern Cotton Oil Company or to the picket line?

A. I didn't come back at all.

Q. You never did come back?

A. Not until after the trouble come up.

Q. Were you arrested and thrown in jail along with these other defendants for violating the law?

A. I sure was.

Q. On December 26th?

A. That's right.

Q. Did you have anything to do with that disturbance?

A. Not a thing in the world—I knowed nothing about it.

Q. You weren't even there?

A. No, sir, my boy was working for the Motor Express Company and he got off and was telling me about it when I come in from North Little Rock.

[fol. 84] Q. You left there at noon the day of the difficulty?
A. Yes, sir.
Q. Still you were arrested and thor-n in jail for violating this Act along with these defendants?
A. That's right.
Q. Andrew, have you ever been arrested?
A. Not until then.
Q. Are you a married man?
A. Yes, sir.
Q. Do you have a family?
A. Yes, sir, I have been married 42 years.
Q. To the same woman?
A. To the same woman.

Mr. Robley: No further questions.

Cross-examination.

By Mr. Robinson:

Q. You are not charged with doing anything?
A. I don't know, sir, I am up here.
Q. You are up here as a witness, aren't you?
A. I guess so.
Q. There is no charge pending against you—it was found that you didn't have anything to do with it down there that evening and that is all there was to it?
A. I—that is what I figured.
Q. However, you did walk picket that day?
A. Yes, sir, I walked from 6:00 o'clock until noon.

Mr. Robinson: That is all.

Witness excused.

Walter Jackson (CM), a witness called by the defendants, after being first duly sworn, testified as follows:

Direct examination.

By Mr. Schoggen:

Q. State your name?
A. Walter Jackson.
[fol. 85] Q. Where do you live?

A. 1009 Epperson, Little Rock.

Q. Where do you work?

A. Swift Cotton Oil Company.

Q. How old are you?

A. 36.

Q. Walter, have you ever worked at the Southern Cotton Oil Company?

A. Yes, sir.

Q. How long have you worked for them?

A. I started to work there in 1928.

Q. You started to work there in 1928?

A. Yes, sir.

Q. And when did you last work for them?

A. In 1945.

Q. Were you there in December 17th last year when they went out on strike?

A. Yes, sir.

Q. Were you one of those employees who went out on strike?

A. Yes, sir.

Q. Why did you go out on strike, Walter

A. Why did I go out on strike?

A. Yes.

Q. I was with the group that struck and we all went out on strike—the whole group.

Q. Did you go out on strike for higher wages and shorter hours?

A. Yes, sir.

Q. What hours had you worked for the Southern Cotton Oil Company?

Mr. Robinson: I don't see what that has got to do with this lawsuit.

The Court: That is entirely a collateral matter. There was no objection or I would have ruled it out.

Q. You say you were at the picket line on December 26th?

A. No, sir.

Q. That was the day of the difficulty?

A. I was down there about 6:15 that evening.

Q. Was that before or after the difficulty?

A. That was after.

[fol. 86] Q. That was after the difficulty?

A. Yes, sir.

Q. Were you in the strikers' tent that day?
A. I was there at 9:30.
Q. You were there at 9:30 in the morning?
A. Yes, sir.
Q. What was your purpose of being in the tent?
A. I made a fire and made some coffee for them.
Q. Did you walk picket there on the 26th day of December?
A. No, sir.
Q. You did not?
A. No, sir.

Mr. Schoggen: That is all.

Cross-examination.

By Mr. Robinson:

Q. You say you were down at the tent at 9:30 that morning?
A. Yes, sir.
Q. Did you walk picket any that day?
A. No, sir.
Q. You left there at 9:30 and didn't go back to the tent anymore that day?
A. I came back that evening.
Q. What time?
A. It was around 6:15.
Q. I thought you were up there at the place where the trouble occurred?
A. I went up there, but it was later—I don't know what time it was.
Q. You didn't see any of it?
A. No, sir.
Q. You didn't have anything to do with it?
A. No, sir.

Mr. Robinson: That is all.

Witness excused.

Mr. Schoggen: I would like to call Mr. Henderson.

Mr. Robinson: He has been sitting in the court room all day, may it please the Court.

[fol. 87] The Court: I imagine his testimony relates to the question of advice?

Mr. Schoggen: It does, your Honor.

The Court: That was allowed to go in because it was not objected to. I don't think he would be a proper witness after he has been sitting in the courtroom and heard the testimony of the witnesses on that very question. The Court will have to exclude him on that ground and that alone. You will be excused.

Mr. Schoggen: With reference to the deposition of Dr. Shuffield by stipulation, Dr. Shuffield was a witness for the defense and had an emergency call at Camden and it was agreeable to counsel to read his testimony and the testimony was taken down by the court reporter and transcribed by the court reporter.

The Court: You may read it.

Thereupon, the deposition of Dr. Joe Shuffield was read to the jury; said deposition being as follows, to-wit:

"Dr. Joe Shuffield; a witness called by the defendants, after being first duly sworn, testified as follows:

Direct Examination.

By Mr. Robley:-

Q. Your name is Dr. Joe Shuffield?

A. That's right.

Q. You are a physician ~~and~~ surgeon of Little Rock?

A. Yes, sir.

Q. Where is your office?

A. 1008 Donaghey Building, Little Rock.

Q. Doctor, how long have you been practicing medicine?

A. I graduated June 6, 1923, and after 2½ years in hospital training, I opened an office.

Q. Are you affiliated with the Baptist State Hospital?

A. Yes.

Q. In what capacity?

A. Chief of Orthopedic surgery or bone surgery.

Q. You have been affiliated with them for what period?

A. Ever since January, 1925.

Mr. Robinson: For the purpose of the record, if these questions are for proving his qualifications, we will admit his qualifications.

[fol. 88] Q. Dr. Shuffield, did you in December of 1945 have occasion to examine Otha Williams?

A. Yes.

Q. On what date?

A. On December 27, 1945.

Q. At what time of day, Doctor?

A. If I remember correctly, it was late in the afternoon—probably 4:00 to 6:00 o'clock. I can't tell you the exact time.

Q. You have before you the record of the Baptist State Hospital, do you not?

A. Yes, sir.

Q. Showing the treatment given to Otha Williams during his tenure there?

A. Yes.

Q. Doctor, what does your record reflect as to the time Otha Williams was admitted to the hospital?

A. 12:55 P. M.—soon after noon.

Q. How soon thereafter did you examine Otha Williams?

A. As I said a minute ago, it was after 4:00 o'clock. I couldn't give you the exact hour. I haven't any record of it. The young man on my service saw him soon after he was admitted and called me and I saw him later in the afternoon, but I don't know the exact hour.

Q. What medicine did you administer to Otha Williams on your first call on the 27th of December, 1945?

A. He had already been placed upon some medicine for pain, and the bruised places he had on his head had been painted with an antiseptic, and as far as personally, I didn't order any changes in that, except I think I added an ice-bag to his right jaw, and I also ordered and X-ray of his jaw.

Q. Doctor, what did that X-ray reflect?

A. There was no fracture of the jaw.

Q. Otha Williams was in the hospital for how many days?

A. He was admitted on the 27th of December and discharged on January 11, 1946.

Q. That is 17 days, is that right?

A. Yes, I guess so.

Q. Doctor, will you tell me if Otha Williams was bleeding on the day he was admitted to the hospital?

A. Not materially, if any at all.

[fol. 89] Q. Do you recall him having any bleeding at all?

A. There might have been a few drops of blood on his head, but there was nothing for him to bleed from—lacerations of importance.

Q. Did he lost consciousness that first day?

A. I don't think so. At least, he wasn't unconscious when I saw him. I don't know what condition he was in when he got into the trouble; but when I saw him, he was conscious.

Q. Doctor, will you tell me if at any time during the 17 days he remained in the Baptist State Hospital—is it true his temperature was taken daily?

A. Yes, every four hours.

Q. Will you look at your record and tell the court whether or not there was ever an instance of Otha Williams having as much as one degree of fever?

A. No, his temperature reached 99 and maybe a fifth on each of the first five days, then on the sixth day it reached 98 and four-fifths, which is just a fifth of a degree, and it ran right at the normal line until January 5th, and on that day he had 99 and one-fifth, and the next two days he had 99 and one-fifth, and it returned to normal and stayed at normal until the 11th when he was discharged.

Q. Doctor, on how many occasions did you see the patient, Otha Williams, from the day he was admitted until the 17th day thereafter when he was discharged?

A. I think I saw him every day that he was in the hospital except January 1st. Some days I saw him twice a day, not because he was in such bad shape, but I had other patients out there and would drop in and see how he was getting along.

Q. After the first day, did you administer any medicine?

A. Nothing except the nurses continued to give him codine and aspirins for pain. I believe the last dose was given about January 9th.

Q. On January 9th the last dose was given?

A. The last dose of medicine for pain.

Q. Doctor, were there any outward signs of pain that you could determine yourself?

A. The only outward sign I would have would be the pulse rate and maybe muscle spasm. I don't remember anything special about that. His pulse rate never was so bad—it was all the way from about 72 to 92. The first few days it ran above 85 right along up to January 3rd and then it [fol. 90] ran around 80 to 85 until January 9th and after that date it stayed just about 80.

Q. Is that about normal?

A. Pretty normal. We count 72 normal for a man. I think some of the pulse rate increase was due to pain and some due to fright.

Q. During Otha Williams' stay in the hospital, did you attempt to get him out of the hospital before the 11th of January?

A. Not particularly. I mentioned about his going home and he didn't want to go. He wanted to wait until tomorrow and his reason was he was afraid he would get in trouble. We kept him three or four or five days longer than we would have if he hadn't had the fear element mixed in with his condition.

Q. Was there ever a day from the time he was admitted to the hospital until the day he left that he was not in such condition that he could walk?

A. Usually there we keep them pretty quiet and we didn't see any unconsciousness or sign of a brain injury. He had several blows on the head, but not knowing what it was done with, we watch them along. He was pretty quiet about five days and then he did get up and walk.

Q. Those are your instructions to all patients?

A. Yes. There is one other thing I forgot to mention. He complained of pain in his neck and neck soreness and when a person has neck soreness, we keep them in bed a few days on account of that. I am sure he didn't have a broken neck and for about six days he was confined to bed.

Q. During his 17 day period there, was his temperature near normal?

A. Yes, he never did have over 99 and one-fifth.

Q. But he never had as much as one degree of fever during his entire stay at the hospital?

A. No, he did not.

Q. I believe you testified if he was bleeding when he came in, you didn't know anything about it?

A. Practically nothing at all. The hemorrhaging wasn't of any importance at all. There might have been a few drops.

Q. There was no temperature and he never lost consciousness?

A. No, sir.

[fol. 91] Q. And he walked out of the hospital on January 11, 1946?

A. I presume he walked out. He was discharged from the hospital and he was up walking around before he left.

Q. Who paid his bill at the hospital or your fee?

A. You have got me there. I don't pay much attention to my books, but if that is desired, I can call the bookkeeper and find out. George Shepherd is the one that called me on the case, but I don't believe he paid the bill. It may not be paid, I don't know.

Mr. Robley: That is all.

Cross-examination.

By Mr. Robinson:

Q. Doctor, a person can be seriously injured and not necessarily bleed from the scalp?

A. That's right.

Q. I believe when you said there was no bleeding, you were talking about from the scalp?

A. That's right.

Q. Would you refer to your record, I believe it is on the first page, and see whether or not it says he bled during the day from his nose?

A. Yes, he did bleed some from his nose. I had forgotten about it. He bled from his nose frequently. That was the day after he went in the hospital.

Q. It states that he bled from the nose frequently during that day?

A. That's right. Let me see what the nurses say about that. I had forgotten all about that. It must not have been serious—there is no sign of any packs or anything being placed in his nose and the house doctor just mentioned his nose had bled frequently during the day. It is not mentioned anywhere else. It was- anything serious.

Q. It is, at least, not normal?

A. I don't know why this nose bleeding took place. He might have had a blow on it—I don't know whether he did or not.

Q. You said he had some fever while he was in the hospital for a few days after he was admitted.

A. Approximately half a degree.

[fol. 92] Q. And he had pain?

A. Yes, he had one blow on the back of his head and it had raised a rather large knot—we call them a mematoma—and he couldn't sleep on his back on account of that knot. I believe we had two sets of X-rays made on that. We were unable to find a clinical sign of any fracture and he complained of his neck being sore, but there was nothing to indicate any fracture.

Q. There wouldn't anything show in an X-ray but broken bones, would it, Doctor?

A. No, sir.

Q. Torn ligaments or anything of that kind wouldn't show in an X-ray?

A. No, sir.

Q. I believe you said he stayed in the hospital 17 days?

A. From December 27th to January 11th, isn't that 14 days? I believe that is 15 days if you count the day he entered and the day he left.

Q. It would have been all right for him to go home four or five days before he did go, but he was afraid?

A. That is right.

Redirect examination.

By Mr. Robley:

Q. Will you look at the hospital report and tell me what the hospital record reflects as to the general condition of the patient on the 27th of December, 1945?

A. Well, the notes that were made is that he had several contusions of the scalp with one mematoma in the occipital region—that is the back portion of the head—and the following day was when I discovered he had trouble with his jaw and muscle spasms of some muscles you chew with and some in the neck, and the third day was when the X-rays were made and they were negative, and at the end of seven or ten days, he quit complaining, which proved his neck and jaw injury was not serious.

Q. Don't you have a record there, the nurses' record, which reveals the condition of the patient each day?

A. Yes, the nurses make mention—the first thing they mentioned was that he was brought to the first floor at 1:00 o'clock, 12-27-45 by Dubisson & Company, a colored ambulance company, and was put to bed and they said I [fol. 93] saw him and he was quiet the rest of the afternoon and that night there wasn't anything unusual—he slept some—and the next morning he was given routine nursing care and his blood and urine was gotten up to the laboratory and there is nothing in the record anywhere that I see to indicate there was anything seriously wrong.

Q. Does your record reflect whether or not from the 28th day of December until the day of his discharge that he was quiet on each of those days?

A. Yes, he was a very good patient. He never was any trouble. He never did complain when I went in and asked him how he was feeling, he told me about his jaw and neck being sore and about the knot on the back of his head. Those things are not on the record. He never was in any danger and there wasn't any comment other than "quiet".

Mr. Robley: That is all.

Recross-examination.

By Mr. Robinson:

Q. If he had a fractured skull or serious brain injury, in all probability, he wouldn't be able to go back to work in 15 days, would he?

A. No.

Q. It doesn't take such a terribly serious injury to disable a man for a few days, does it, Doctor?

A. No.

Mr. Robinson: That is all.

The Witness excused.

Mr. Schoggen: *The defendants rest.*

The Court: Is there any rebuttal?

Mr. Robinson: That is the State's case, may it please the Court.

RENEWAL OF MOTION FOR DIRECTED VERDICT AND DENIAL THEREOF

Mr. Schoggen: We want to renew our motion for a directed verdict for the defendants.

The Court: The motion is overruled.

The defendants objected to the above ruling of the Court and at the time asked that their exceptions be noted of record, which was accordingly done.

[fol. 94] This was all of the testimony introduced upon the trial of this cause.

(At this time, a recess was taken by the court until 7:45 o'clock P.M. of the same day, and the jury being admonished by the court to keep together and not to discuss the case among themselves or with anyone else. Court was convened at 7:45 P. M. and the following proceedings were had and done:)

STATE'S REQUESTED INSTRUCTIONS

Thereupon, the State requested the Court to instruct the jury as follows:

States Instruction No. 1

You are instructed that Section Two of Act 193 of 1943, which is the law of this state, provides as follows:

"It shall be unlawful for any person acting in concert with one or more other persons, to assemble at or near any place where a 'labor dispute' exists and by force or violence prevent or attempt to prevent any person from engaging in any lawful vocation, or for any person acting either by himself, or as a member of any group or organization or acting in concert with one or more other persons, to promote, encourage or aid any such unlawful assemblage. Any person guilty of violating this section shall be deemed guilty of a felony, and upon conviction thereof shall be punished by confinement in the State Penitentiary for not less than one (1) year, nor more than two (2) years."

The Court: The Court, of its own motion, is giving the following instruction, explanatory of that Act:

You are instructed that this section of the Act includes two offenses, first, the concert of action between two or more persons resulting in the prevention of a person by means of force and violence from engaging in a lawful vocation. And, second, in promoting, encouraging or aiding of such unlawful assemblage by concert of action among the defendants as is charged in the information here. The latter offense is the one on trial in this case.

The Court gave the State's requested Instruction No. 1, as amended by the Court.

The defendants objected to the action of the Court in giving the States Instruction No. 1, as amended, and at [fol. 95] the time asked that their exceptions be noted of record, which was accordingly done.

Mr. Schoggen: The defendants specifically object to the giving of that part of the instruction which includes the part of Section 2 of Act 193 of 1943 which says: "It shall be unlawful for any person acting in concert with one or more other persons, to assemble at or near any place where a 'labor dispute' exists and by force or violance prevent or attempt to prevent any person from engaging in any lawful vocation," for the reason that this charge is not included in the information and the giving of it tends to confuse the jury. The modification by the Court is further specifically objected to for the reason that it fails to cure the error of giving the part herein quoted.

States Instruction No. 2

If you believe from the evidence in this case beyond a reasonable doubt that on or about the 26th day of December, 1945, Walter Campbell, acting in concert with other persons, assembled at the Southern Cotton Oil Company's plant in Pulaski County, Arkansas, where a "labor dispute" existed and by force and violence prevented Otha Williams from engaging in a lawful vocation; and if you further believe beyond a reasonable doubt that the defendants wilfully, unlawfully and feloniously, which acting in concert with each other, promoted, encouraged and aided such unlawful assemblage, you wil- convict the defendants as charged in the indictment.

The Court gave the State's requested Instruction No. 2.

The defendant objected to the action of the Court in giving the State's requested Instruction No. 2 and at the time asked that their exceptions be noted of record, which was accordingly done.

States Instruction No. 3

You are instructed that the burden of proof rests upon the state to prove to the satisfaction of the jury, beyond a reasonable doubt, every material allegation in the indictment, and, unless that has been done, the jury must find the defendants not guilty.

The Court gave the State's requested Instruction No. 3.

The defendants objected to the action of the Court in giving the State's requested Instruction No. 3 and at the [fol. 96] time asked that their exceptions be noted of record, which was accordingly done.

States Instruction No. 4

The defendants are presumed to be innocent and not guilty as charged in the indictment. This presumption of innocence should continue and prevail in your minds until you are convinced of their guilt by the evidence beyond a reasonable doubt.

The Court *h*ave the State's requested Instruction No. 4.

The defendants objected to the action of the Court in giving the State's requested Instruction No. 4 and at the time asked that their exceptions be noted of record, which was accordingly done.

State's Instruction No. 5

Reasonable doubt is not any possible or imaginary doubt for all things that depend on human testimony are susceptible of some possible or imaginary doubt. To be convinced beyond a reasonable doubt is where after an entire consideration and comparison of all the testimony, the minds of the jurors are left in that condition where they have an abiding faith to a moral certainty of the truth of the charge. A moral certainty is defined as such a certainty as the juror would be willing to act on in an important affair of his own life.

The Court gave the State's requested Instruction No. 5.

The defendants objected to the action of the Court in giving the State's requested Instruction No, 5 and at the time asked that their exceptions be noted of record, which was accordingly done.

Instruction No. 6

(Withdrawn by the State.)

State's Instruction No. 7

You are the sole judges of the credibility of the witnesses and the weight that should be given to their testimony. You may judge a witness' credibility by the manner in which he gives his testimony; his demeanor on the stand, his means of knowledge about the facts to which he testifies; its consistency or inconsistency with the other testimony;

[fol. 97] his interest in the result of the trial; any feeling he may have for or against the defendants: any bias or prejudice he may have for or against the defendants; and any other facts that tend to shed light on the truth or falsity of such testimony.

The Court have the State's requested Instruction No. 7.

The defendants objected to the action of the Court in giving the State's requested Instruction No. 7 and at the time asked that their exceptions be noted of record, which was accordingly done.

State's Instruction No. 8

As man of reason, sense and experience, on the whole testimony in the case, if you are convinced beyond a reasonable doubt of the guilt of any one or all of the defendants, it is you- duty to convict him or them. If, on the other hand, there is a reasonable doubt in your mind of his or their guilt, it is your duty to acquit him or them. You may convict one, two, or all three defendants, or you may acquit one, two or all three of them, according to their guilt or innocence.

The Court gave the State's requested Instruction No. 8.

The defendants objected to the action of the Court in giving the State's requested Instruction No. 8 and at the time asked that their exceptions be noted of record, which was accordingly done.

State's Instruction No. 9

If you find all three of the defendants guilty of a felony as charged in the indictment, your verdict will be, "We, the jury, find the defendants guilty of a felony as charged in the indictment," and assess their punishment at not less than one nor more than two years in the state penitentiary. If you should find one or two of the defendants guilty of a felony as charged in the indictment, your verdict will be, "We, the jury, find (here insert the name or names of the one or ones you find guilty) guilty of a felony as charged in the indictment and assess his or their punishment at not less than one nor more than two years in the state penitentiary." If you should find one, two, or all three of the defendants guilty of a felony as charged in the information and do not agree on the punishment you may leave the [fol. 98] punishment to the court, in which event, the court will fix the punishment within the limits mentioned just the same as you could have done in the first instance. If you find the defendants not guilty or if you have a reasonable doubt of their guilt, you will say, "We, the jury find the defendants not guilty."

The Court have the State's requested Instruction No. 9.

The defendants objected to the action of the Court in giving the State's requested Instruction No. 9 and at the time asked that their exceptions be noted of record, which was accordingly done.

DEFENDANT'S REQUESTED INSTRUCTIONS

Thereupon, the defendants requested the Court to instruct the jury as follows:

Instruction No. 1

The court charges you that the defendants start out in the beginning of the trial with a presumption of innocence in their favor. This presumption continues throughout the trial until overcome by the evidence and is sufficient of itself to justify a verdict of not guilty, unless you are convinced beyond a reasonable doubt of the guilt of the defendants as charged in the information. If any reasonable view is or can be adopted to justify verdicts of acquittal, or if you have a reasonable doubt of the guilt of the defendants, then it is your duty to adopt such a view and return verdicts of not guilty.

The Court gave the defendants' requested Instruction No. 1.

The State objected to the action of the Court in giving defendants' requested Instruction No. 1 and at the time asked that its exceptions be noted of record, which was accordingly done.

Instruction No. 2

The Court instructs you that the burden of proof is on the State to prove to you beyond a reasonable doubt, all the material allegations of the information. If on the whole case the State has failed in this, it will be your duty to return a verdict of not guilty.

The Court gave defendants' requested Instruction No. 2.

The State objected to the action of the Court in giving [fol. 99] defendants' requested Instruction No. 2 and at the time asked that its exceptions be noted of record, which was accordingly done.

Instruction No. 3

The court instructs you that if you find that any witness has sworn falsely to any material fact in this case, you may disbelieve the whole testimony of such witness, if you believe it to be false; or believe that part which you think to be true and disbelieve that part which you regard to be false.

The Court gave defendants' requested Instruction No. 3.

The State objected to the action of the Court in giving defendants' requested Instruction No. 3 and at the time asked that its exceptions be noted of record, which was accordingly done.

Instruction No. 4

You are instructed that the mere fact that an information has been returned against the defendants, charging them with a crime, raises no presumption that they are guilty of the offense charged, or of any offense, and will not be considered by you for any purpose while deliberating the question of their guilt or innocence. The information only furnishes a method for presenting an accused person before the court for trial.

The Court gave defendants' requested Instruction No. 4.

The State objected to the action of the Court in giving defendants' requested Instruction No. 4 and at the time asked that its exceptions be noted of record, which was accordingly done.

Instruction No. 5

The court instructs you that it is the right of the defendants to testify in their own behalf. You will consider the testimony of the defendants as you consider the testimony of other witnesses. In other words, you are not required to believe the testimony of the defendants because they are defendants, nor may you disregard their testimony merely because they are defendants in the case, but you will weigh and consider their testimony by the standards the court has given you in weighing the testimony of other witnesses.

The Court gave defendants' requested Instruction No. 5.

[fol. 100] The State objected to the action of the Court in giving defendants' requested Instruction No. 5 and at the time asked that its exceptions be noted of record, which was accordingly done.

Instruction No. 5-A

The Court instructs you that in weighing the testimony of witnesses, you will take into consideration any bias or prejudice they may have for or against the defendants, any interest they may have in the outcome of the case, their demeanor on the witness stand and any other facts or circumstances in evidence which may shed light on the truth or falsity of the testimony. It is your duty to determine what the truth is, and you will take into the jury room with you, your common sense and good judgment in weighing the testimony of any and all witnesses and in determining what weight you will give to the testimony of each witness.

The Court gave defendants' requested Instruction No. 5-A.

The State objected to the action of the court in giving defendants' requested Instruction No. 5-A and at the time asked that its exceptions be noted of record, which was accordingly done.

Instruction No. 6

The court charges you that you shall not permit any sympathy, prejudice or bias for or against the prosecution of the defendants by reason of the nature of the offense charged or upon any ground or from any source whatever, to influence or affect your consideration of the evidence, or your findings, or your verdict in this case. You will find your verdict according to the evidence given here in the court and under the law as contained in these instruction- from the court.

Mr. Schogge[illegible] want to ask to modify that instruction by cutting out the words "the evidence, or your findings, or"

The Court: I think I am going to cut out the words "or upon any ground or from any source whatever" and cut out the words "your consideration of" and "or". Thereupon the Court amended said instruction to read as follows:

"The court charges you that you shall not permit any sympathy, prejudice or bias for or against the prosecu- [fol. 101] tion of the defendants by reason of the nature of the offense charged to influence or affect your verdict in this case. You will find your verdict according to the evidence given here in the court and under the law as contained in these instructions from the court."

The Court gave defendants' requested Instruction No. 6, as amended by the court.

The defendants objected to the action of the Court in amending their requested Instruction No. 6 and at the time asked that their exceptions be noted of record, which was accordingly done.

Mr. Schoggen: Defendants object and except to the refusal of the court to give defendants' requested Instruction No. 6 ~~as requested~~, and to the modification as made by the court and to the giving of the instruction as modified.

Instruction No. 7

(Withdrawn by the Defendants)

Instruction No. 8

You are instructed that before the defendants, or either of them can be convicted in this case, you must be convinced beyond a reasonable doubt that they promoted, encouraged, and aided in an unlawful assemblage at the plant of the Southern Cotton Oil Company, for the purpose of preventing Otha Williams from engaging in a lawful vocation.

The Court gave defendants' requested Instruction No. 8.

The State objected to the action of the Court in giving defendants' requested Instruction No. 8 and at the time asked that its exceptions be noted of record, which was accordingly done.

Instruction No. 9

The court instructs you that mere fact, if you find it to be a fact that the defendants, or either of them, were present at the time of an altercation between Campbell and Williams, such fact alone would not justify you in finding the defendants or either of them guilty.

The Court *h*ave defendants' requested Instruction No. 9.

The State objected to the action of the Court in giving defendants' requested Instruction No. 9 and at the time asked that its exceptions be noted of record, which was accordingly done.

[fol. 102]

Instruction No. 10

The Court instructs you that it is perfectly lawful for laborers to peacefully picket their place of employment and to try to persuade by peaceful means other employees to join them.

The Court gave defendants' requested Instruction No. 10.

The State objected to the action of the Court in giving defendants' requested Instruction No. 10 and at the time asked that its exceptions be noted of record, which was accordingly done.

Instruction No. 11

The court instructs you that before you can convict the defendants, or either of them, under the information in this case, you must be convinced beyond a reasonable doubt that the defendants, or either of them, did promote, encourage or aid an unlawful assemblage, as alleged in the information. If the State has failed to convince you beyond a reasonable doubt of this, it will be your duty to return a verdict of not guilty.

The Court refused to give defendants' requested Instruction No. 11.

The defendants objected to the action of the Court in refusing to give their requested Instruction No. 11 and at the time asked that their exceptions be noted of record, which was accordingly done.

These Were All of the Instructions Requested by Either Party or Given by the Court.

• • • • • • •

After the arguments of counsel for the State and the defendants, the jury retired at 9:10 o'clock P. M. to consider their verdict. At 9:40 the court asked the Sheriff to bring the jury in and the following proceedings were had:

The Court: Have you reached a verdict all, gentlemen?

Foreman: Yes, sir.

The Court: Pass that verdict down the line and let every juror examine it before a verdict is made.

(The jury examines the verdict.)

The Court: I am going to order the jury to retire to the jury room and then return a verdict. Examine what you have and return your verdict.

[fol. 103] (The jury again retired at 9:45 P. M. and *and* 9:55 o'clock P. M. returned back into the courtroom where the following proceedings were had:)

The Court: Gentlemen, the court noticed that the Clerk observed some omission in your verdict and the foreman, at his suggestion, filled it in. Is the verdict now the one you had agreed upon before you came in with it?

Foreman: Yes, sir.

The Court: Is there any challenge to the method by which the verdict was reached or that the Clerk suggested some filling in?

Mr. Schoggen: I don't know of any reason why we should, your honor.

The Court: Read the verdict, Mr. Clerk.

The Clerk (Reading the verdict): "In each case, Roy Cole, Louis Jones and Jessie Bean, we, the jury, find the defendants, Roy Cole, Louis Jones and Jessie Bean, guilty of a felony as charged in the information, and leave the punishment to the court."

Mr. Schoggen: Will you have the jury polled?

(The jury was polled by the Clerk.)

The Court: Very well, gentlemen, there was manifestly some disagreement as to what the punishment should be in this case, so the court is going to let you know now that I will respect the judgment of the two groups and make the sentence one (1) year, and that is what it will be at the proper time.

* * * * * * *

Judge's Certificate to Bill of Exceptions

And now on the 2nd day of January, 1947, and well within the 45 days heretofore by the court granted herein to file their bill of exceptions, come the defendants herein and present to Hon. Gus Fulk, the regular Judge of the Pulaski Circuit Court, First Division, who was present and presiding at all times upon the trial of this cause, this, their bill of exceptions herein which is by said Judge examined, found to be complete and correct record thereof, and same he now approves as such and orders that same be filed as a part of the record in this cause.

[fol. 104] Witness my hand as such Judge of the Pulaski Circuit Court, First Division, on this 2nd day of January, 1947.

Gus Fulk, Circuit Judge.

Approved: —— ——, Prosecuting Attorney; Elmer Schoggen, Attorneys for Defendants.

Reporter's Fee $150.00.

Reporter's Certificate to foregoing Bill of Exceptions omitted in printing.

Clerk's Certificate to foregoing transcript omitted in printing.

IN SUPREME COURT OF ARKANSAS

No. 4448

Appeal from Pulaski Circuit Court, First Division

ROY COLE, LOUIS JONES and JESSIE BEAN, Appellants

v.

THE STATE OF ARKANSAS, Appellee

JUDGMENT—June 9, 1947

This cause came on to be heard upon the transcript of the record of the circuit court of Pulaski County, First Division, and was argued by counsel, on consideration whereof it is the opinion of the court that as to appellants Roy Cole and Louis Jones, there is no error in the proceedings, and judgment of said circuit court in this cause.

It is therefore considered by the court that the judgment of said circuit court as to said Roy Cole and Louis Jones, in this cause rendered be, and the same is hereby in all things affirmed with costs, and that unless appellants shall, within fifteen juridical days surrender themselves to the proper authority in execution of said judgment, their bonds be declared as forfeited.

But it is further the opinion of the Court that as to appellant Jessie Bean, there is error in so much of the judgment of said circuit court as found him guilty, since there is no substantial evidence to show that he was actively engaged in the enterprise with the other appellants.

[fol. 105] It is therefore considered by the court that as to Jessie Bean the judgment be and it is hereby, for the error aforesaid, reversed, annulled and set aside, and as to said defendant the cause be, and it is hereby dismissed.

It is further considered that said appellee recover of said appellants Cole and Jones, all *her* costs in this court in this cause expended, and that said Jessie Bean, recover of said appellee all his costs in this court and the court below in this cause expended.

Justices Smith and McHaney dissent as to the reversal as to Bean; Justice Robins dissents on the ground that the judgments as to all the appellants should have been reversed.

IN THE SUPREME COURT OF ARKANSAS

OPINION—June 9, 1947

GRIFFIN SMITH, C. J.

The appellants here were appellants in the case decided October 7, 1946. In the former proceeding they were tried on an indictment charging that by the use of force and violence they prevented Otha Williams from engaging in work as a laborer. The charge was based upon a part of Sec. 1 of Act 193 of 1943. *Cole et als.* v. *State*, Ark. Law Rep., V. 85, No. 196 S. W. 2d 582. The judgments were reversed and the causes remanded for a new trial because testimony was erroneously admitted.

On remand the indictment was quashed and the defendants went to trial on information filed by the Prosecuting Attorney. The verdicts were that each should serve a year in the State Penitentiary.

For reversal it is argued (a) that evidence does not support the verdicts; (b) Act 193 cannot be construed to apply to facts presented; (c) Section 2 of Act 193 is unconstitutional and its validity has not been determined; and (d) the defendants' plea of former jeopardy should have been sustained. We discuss the objections in reverse order.

First. (d) This contention cannot be maintained. The defendants were convicted when tried on the indictment—an indictment they alleged was void because of alleged irregularities in the selection of grand jurors. When the causes [fol. 106] were remanded the Prosecuting Attorney elected to proceed by information. In so doing he disregarded the indictment; a result the defendants had sought. The principles announced in *State of Arkansas v. Clark,* 32 Ark. 231, are in point. See also *Johnson v. The State,* 29 Ark. 31. It is cited in the Clark case. *Fox v. The State,* 50 Ark. 528, 8 S. W. 836, was an appeal from a conviction under an indictment charging false imprisonment. Fox had formerly been indicted for robbery, and acquitted. This Court held that in the circumstances of that case false imprisonment was an ingredient of the robbery charge for which Fox has stood trial and as to which he had been found not guilty; hence there could be but one prosecution. *Lee v. The State,* 26 Ark. 260 is not contrary. That case was decided when the Constitution of 1868 was in effect, its provision being that ". . . no person, after having been once acquitted by a jury, for the same offense shall be again put in jeopardy of life or liberty." The Constitution of 1874 is: ". . . and no person, for the same offense, shall be twice put in jeopardy of life or liberty." Effect of the case is that dismissal of a valid indictment against one who insists upon trial before a jury then sworn amounted to an acquittal, and a plea of former jeopardy was good against a second indictment for the same offense.

Second. (c) We have heretofore construed applicable provisions or sections of Act 193 as cases involving the legislation were presented. In *Smith and Brown v. State,* 207 Ark. 104, 179 S. W. 2d 185, it was said that the Act was not open to constitutional objections. That statement, of course, was intended to apply to the facts of the appeal then being considered. In *Guerin v. State,* 209 Ark. 1082, 193 S. W. 2d 977, the provisions of the Act formerly dealt with were treated as constitutional upon authority of the Smith-Brown case. To the extent that judicial construction of a Legislative Act would deprive an accused person of equal protection of the law, Amendment Fourteen to the Federal Constitution would be violated; but that question is not involved in the dispute with which we are dealing. Our consideration in this respect is directed to the single proposition that force and violence were employed by two of the defendants.

A literal construction of that part of Sec. 2 of Act 193 making it a felony for any person "acting either by him-

[fol. 107] self, or as a member of a group or organization, or acting in concert with one or more persons, to promote, encourage, or aid [in the character of unlawful assemblage there prohibited''] would, it is said, prevent peaceful picketing. The Act does not have this purpose in view, and if it did that part would be struck down by the Courts. *Riggs v. Tucker Duck & Rubber Co.*, 196 Ark. 571, 119 S. W. 2d 507.

Information in the instant case, while charging that Cole, Bean and Jones violated the quoted provision of Sec. 2 of the Act, also accused them of using force and violence to prevent Williams from working. The use of force or violence, or threat of the use of force or violence, is made unlawful by Sec. 1.

Third. (b) In view of the fact that the judgments as to Cole and Jones are affirmed without invoking any part of Sec. 2 of the Act, it is not necessary to discuss the construction appellants think the facts do not sustain.

Fourth. (a) It is admitted that a labor dispute existed and that while the defendants were not ''walking picket'' they were striking against Southern Cotton Oil Company in Little Rock. Facts incident to the difficulty between Campbell and Williams are set out in the opinion of October 7th, 1946. There is substantial testimony in the record before us that Cole was on the scene where a group of strikers had gathered to await exit of Williams and others from the mill, five of the employes having remained at work. Cole carried a club, or walking stick. He told Willie Brown to go ahead, that ''they'' were not after him—but, inferentially, were waiting for Williams. Jones said, ''Come on, boys,'' and the strikers ''flew up like blackbirds and came fighting.'' No witness testified to any activity by Bean. Willie Johnson merely saw him standing across the street. Brown ''never did see Bean.'' Elvie Washington merely ''saw'' Bean, but did not say what he was doing. Bishop Jackson said ''Bean had been there on the corner, but had gone and was about half a block away.''

These were the material witnesses who testified for the State. References to time and place were directed to the assault upon Williams by Campbell. Williams in defense used a pocket knife, inflicting wounds from which Campbell died.

While it is probable that Bean was associated with Cole and Jones in their undertaking, Act 193 is highly penal, and [fol. 108] we feel that evidence to sustain a conviction should not rest upon any but a substantial basis.

The judgments as to Cole and Jones are affirmed; as to Bean the judgment is reversed with directions that the cause be dismissed.

Mr. Justice Frank G. Smith and Mr. Justice McHaney think the evidence was sufficient to affirm as to all of the defendants, and therefore dissent as to the reversal of the judgment against Bean; Mr. Justice Robins on the ground that the evidence was insufficient as to all three of the defendants.

IN THE SUPREME COURT OF ARKANSAS

[Title omitted]

PETITION FOR REHEARING—Filed June 25, 1947

Come the appellants, Roy Cole and Louis Jones, and respectfully petition the court that they be granted a rehearing in this cause:

1. For cause of this petition, they state that the court in the first paragraph of the opinion, stated that the defendants sought to be proceeded against by information instead of indictment. It is respectfully submitted to the court, that this conclusion is not borne out by the record.

2. In the second paragraph, the opinion states that the equal protection of the law guaranteed by the 14th Amendment to the Federal Constitution, is not involved. It is further stated, "our consideration in this respect is directed to the single proposition that force and violence were employed by two of the defendants." As we understand the information under which appellants were tried, it did not involve the charge of force and violence at all, but was made under Sec. 2 of Act 193, which does not cover force and violence.

3. The opinion affir-s the conviction of Cole and Jones "without invoking any part of Sec. 2 of Act 193", although the information was based entirely on Sec. 2 of the Act.

4. To uphold the conviction of these defendants under one section of a statute when they were charged with viola-

tion of another section deprives the defendants of a fair trial and is a denial of due process of law.

[fol. 109] 5. Under the instructions given by the court to the jury, the jury could have found the defendants guilty only of activities relating to an alleged unlawful assemblage. The jury could not have found the defendants guilty of using force and violence because the jury was given no instructions on any such finding. To sustain a conviction on grounds not charged in the information and which the jury had no opportunity to pass upon, deprives the defendants of a fair trial and a trial by jury, and denies the defendants that due process of law guaranteed by the 14th Amendment to the United States Constitution.

Wherefore, these petitioners pray that they be granted a rehearing, and on such rehearing, the judgments of conviction against them be reversed and dismissed.

Respectfully submitted, Ross Robley and Elmer Schoggen, Attorneys for Appellants.

[File endorsement omitted.]

IN SUPREME COURT OF ARKANSAS

ORDER DENYING PETITION FOR REHEARING—June 30, 1947

Rehearing petitions denied:

* * * * * * *

No. 4448—Roy Cole, Louis Jones, et al. v. State.

Cost Bond on Appeal for $500 filed July 11, 1947, omitted in printing.

Clerk's Certificate to foregoing transcript omitted in printing.

ARKANSAS SUPREME COURT

No. 4448

ROY COLE and LOUIS JONES

v.

STATE OF ARKANSAS

STIPULATION ON PRINTING OF RECORD

It is stipulated and agreed by and between counsel for the parties hereto that there may be omitted from the [fol. 110] printed record to be presented to the United States Supreme Court on appeal or on petition for certiorari in the above case, the proceedings on *voir dire* in the trial of this case in the Pulaski Circuit Court, First Division, such proceedings commencing on page 32 of the certified transcript of the record, commencing with the words: "The Clerk: Mr. Gerald LeFever presented," and ending on page 87 of said transcript with the words: "Mr. Schoggen: He is good." There may also be omitted from the printed record pages 4 and 5 of the transcript (bail bonds, 28, 29 and 30 (bonds on appeal), and 214 and 215 (power of attorney from National Surety Corporation to T. E. Welsh and others).

For the State of Arkansas: Guy E. Williams, Attorney General, Oscar E. Ellis, Assistant Attorney General, for Roy Cole and Louis Jones: Lee Pressman.

[fol. 111] [Caption omitted]

[fol. 112] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1947

No. 373

Pulaski 1st Div.

ROY COLE and LOUIS JONES

v.

STATE OF ARKANSAS

Filed: Apr. 15, 1948. C. R. Stevenson, Clerk of Supreme Court of Arkansas.

MANDATE

[fol. 113] UNITED STATES OF AMERICA, ss:

The President of the United States of America

To the Honorable the Judges of the Supreme Court of the State of Arkansas, Greeting:

Whereas, lately in the Supreme Court of the State of Arkansas, before you, or some of you, in a cause between Roy Cole, Louis Jones and Jessie Bean, Appellants, and The State of Arkansas, Appellee, No. 4448, wherein the judgment of the said Supreme Court, entered in said cause on the 9th day of June, A. D. 1947, is in the following words, viz:

"This cause came on to be heard upon the transcript of the record of the circuit Court of Pulaski County, First Division, and was argued by counsel, on consideration whereof, it is the opinion of the court that as to appellants Roy Cole and Louis Jones, there is no error in the proceedings and judgment of said circuit court in this cause.

It is therefore considered by the court that judgment of said circuit court as to said Roy Cole and Louis Jones, in this cause rendered be, and the same is hereby in all things affirmed with costs, and that unless appellants shall, within fifteen juridical days surrender themselves to the proper authority in execution of said judgment, their bonds be declared as forfeited.

But it is further the opinion of the Court that as to appellant Jessie Bean, there is error in so much of the judgment of said circuit court as found him guilty, since there is no substantial evidence to show that he was actively engaged in the enterprise with the other appellants.

It is therefore considered by the court that as to Jessie Bean the judgment be and it is hereby, for the error aforesaid, reversed, annulled and set aside, and as to said defendant the cause be, and it is hereby dismissed.

[fol. 114] It is further considered that said appellee recover of said appellants Cole and Jones, all her costs in this court in this cause expended, and that said Jessie Bean, recover of said appellee all his costs in this court and the court below in this cause expended.

Justices Smith and McHaney dissent as to the reversal as to Bean; Justice Robins dissents on the ground that the judgments as to all the appellants should have been reversed."

As by the inspection of the transcript of the record of the said Supreme Court, which was brought into the Supreme Court of the United States by virtue of a writ of certiorari, agreeably to the act of Congress, in such case made and provided, fully and at large appears.

And whereas, in the present term of October, in the year of our Lord one thousand nine hundred and forty seven, the said cause came on to be heard before the Supreme Court of the United States on the said transcript of record, and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this Court that the judgment of the said Supreme Court, in this cause be, and the same is hereby, reversed with costs, and that the said appellants, Roy Cole and Louis Jones, recover from the said appellee Five Hundred Thirty-eight Dollars and Fifty-nine Cents for their costs herein expended and have execution thereof.

And it is further ordered that this cause be, and the same is hereby, remended to the said Supreme Court for proceedings not inconsistent with the opinion of this Court.

March 8, 1948.

[fol. 115] And the same is hereby remanded to you, the said Judges of the said Supreme Court of the State of Arkansas, in order that such execution and proceedings may be had in the said cause, in conformity with the judgment and decree of this Court above stated, as, according to right and justice, and the Constitution and laws of the United States, ought to be had therein, the said writ of certiorari notwithstanding.

Witness the Honorable Fred M. Vinson, Chief Justice of the United States, the 14th day of April, in the year of our Lord one thousand nine hundred and forty-eight.

Costs of Roy Cole and Louis Jones.

Clerk	$180.25
Printing Record	$338.34
Attorney	$538.59

Charles Elmore Cropley, Clerk of the Supreme Court of the U. S., by (S.) Hugh W. Barr, Deputy.

[fol. 116] IN THE SUPREME COURT OF ARKANSAS

ROY COLE and LOUIS JONES, Appellants

v.

THE STATE OF ARKANSAS, Appellee.

Appeal from Pulaski Circuit Court

ORDER ON MANDATE FROM SUPREME COURT OF THE UNITED STATES—April 19, 1948

On this day the mandate of the Supreme Court of the United States, reversing the judgment of this court rendered on the 9th day of June, A. D. 1947 is presented, which is ordered filed as a part of the record of this cause.

And it appearing from the mandate aforesaid that on the 8th day of March, A. D. 1948 the said Supreme Court of the U. S. rendered the following judgment in this cause, viz:

"It is ordered and adjudged by this court that the judgment of the said Supreme Court in this cause be, and the same is hereby reversed with costs; and that the said appellants Roy Cole and Louis Jones, recover from the said appellee Five Hundred Thirty-eight Dollars and Fifty-nine Cents for their costs herein expended and have execution thereof.

"And it is further ordered that this cause be, and the same is hereby, remanded to the said Supreme Court for proceedings not inconsistent with the opinion of this Court."

Same Date: On motion of Attorney General, this cause is redocketed and the parties allowed the usual time for briefs on the questions presented by the mandate.

[fol. 117] IN THE SUPREME COURT OF ARKANSAS

ORDER OF SUBMISSION—MAY 24, 1948

Causes Submitted

The following causes are submitted upon the transcripts of the records and the briefs filed, and are by the court severally taken under advisement, viz:

• • • • • • •

4448, Roy Cole et al v. State, From Pulaski Circuit Court.

IN SUPREME COURT OF ARKANSAS

ROY COLE and LOUIS JONES

v.

THE STATE OF ARKANSAS

Appeal from Pulaski Circuit Court, First Division

JUDGMENT—January 10, 1949

This cause came on to be heard upon the transcript of the record of the circuit court of Pulaski County and was argued by counsel, on consideration whereof it is the opinion of the court that there is no error in the proceedings and judgment of said circuit court in this cause.

It is therefore considered by the court that the judgment of said circuit court in this cause rendered be and the same is hereby in all things affirmed with costs, and that unless appellants shall, within fifteen juridical days, surrender themselves to the Supreme Court in execution of said judgment, their bonds be declared as forfeited.

It is further considered that said appellee recover of said appellants all her costs in this court, in this cause expended and have execution thereof. R. W. Robins, J. dissents. Justice George Rose Smith did not participate; case determined prior to Jan. 1, 1949.

[fol. 118] IN THE SUPREME COURT OF ARKANSAS

No. 4448

ROY COLE and LOUIS JONES, Appellants

v.

THE STATE OF ARKANSAS, Appellee

OPINION OF THE COURT—January 10, 1949

Affirmed: Ed. F. McFaddin, Associate Justice.

This case has undergone a rather extensive judicial experience. The incidents giving rise to the case occurred in December, 1945; and this is the third opinion of this Court concerning the appellants' participation in those incidents.

Cole, Jones and Bean were indicted by the Grand Jury of Pulaski County, Arkansas, for violation of Act 193 of 1943. A trial resulted in conviction of all three defendants.° They appealed to this Court, and the judgments for conviction were reversed, and the causes remanded for a new trial. The constitutionality of the act 193 was sustained, but the reversal was because of errors occurring in the course of the trial. See Cole et al v. State, 210 Ark. 433, 196 S. W. 2d 582. On remand to the Circuit Court, the Prosecuting Attorney elected to proceed on a new information rather than on the original indictment.[1] The information on which the defendants were tried, and from which comes the present appeal, reads in full as follows:

> "Comes Sam Robinson, Prosecuting Attorney within and for Pulaski County, Arkansas, and in the name, by the authority, and on behalf of the State of

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[1] This procedure was sustained in the opinion of Cole et al v. State, 211 Ark. 836, 202 S.W. 2d 770.

> Arkansas, information gives accusing Roy Cole, Louis Jones and Jessie Bean of the crime of felony, committed as follows, to wit: On the 26th day of December, A. D. 1945, in Pulaski County, Arkansas, Walter Ted Campbell, acting in concert with other persons, assembled at the Southern Cotton Oil Company's plant in Pulaski County, Arkansas, where a labor dispute existed, and by force and violence prevented Otha Williams from engaging in a lawful vocation. The said Roy Cole, Louis Jones and Jessie Bean, in the [fol. 119] County and State aforesaid, on the 26th day of December, 1945, did unlawfully and feloniously, acting in concert with each other, promote, encourage and aid such unlawful assemblage, against the peace and dignity of the State of Arkansas."

The trial on the information resulted in a conviction of all three defendants. They again appealed to this Court. The judgment of conviction against Bean was reversed and the cause against him was dismissed because of the insufficiency of the evidence. The judgments against Cole and Jones were affirmed. See Cole et al. v. State, 211 Ark. 836, 202 S.W. 2d 770. They petitioned the U. S. Supreme Court for certiorari, which was granted: and that Tribunal, in an opinion rendered on March 8, 1948, said:

> "The convictions were for a violation of section 2. Petitioners urged in the State Supreme Court that the evidence was insufficient to support their conviction of a violation of Section 2. They also raised serious objections to the validity of that section under the Fourteenth Amendment to the Federal Constitution. None of their contentions were passed upon by the State Supreme Court. It affirmed their conviction as though they had been tried and convicted of a violation of section 1 when in truth they had been tried and convicted only of a violation of a single offense charged in section 2, an offense which is distinctly and substantially different from the offense charged in section 1."

The opinion concluded with this directive:

> "In the present state of the record we cannot pass upon those contentions which challenge the validity of

> section 2 of the Arkansas Act. The judgment is reversed and remanded to the State Supreme Court for proceedings not inconsistent with this opinion."

When the mandate of the U. S. Supreme Court was filed in this court, permission was granted for the filing of briefs on the questions presented by the mandate. In these new briefs the defendants (appellants) correctly take the position that the previous opinion of this Court and the holding of the U. S. Supreme Court dispose of all questions except [fol. 120] two, which are: (1) the constitutionality of that part of section 2 of said Act 193 which is here involved; and (2) sufficiency of the evidence to sustain the verdicts of conviction under the information previously copied. We proceed to consider these questions.

I. *Constitutionality.* In assailing the constitutionality of said Act 193, appellants say that the Act is too indefinite to charge an offense, and also that the Act violates provisions of both the State and the Federal Constitutions and Amendments. Section 1 of Act 193 has been upheld by this court in several cases. See Smith and Brown v. State, 207 Ark. 104, 179 S.W. 2d 188 and Guerin v. State, 209 Ark. 1082, 193 S.W. 2d 997. In Smith and Brown v. State we said:

> ". . . . The Act here in question is an exact or verbatim copy of the Texas statute, Art. 1621b of Texas Penal Code as amended by Chap. 100, Acts 47th Legislature, Regular Session, Vernon's Ann. P. C. Art 1621b, except the latter statute carries an emergency clause, whereas, ours does not. On December 10, 1941, the Court of Criminal Appeals of Texas sustained the constitutionality of the Texas statute in ex parte Frye, 143 Tex. Cr. R. 9, 156 S.W. 2d 531. On the same date the same Texas court sustained the same statute, in ex parte Sanford, 144 Tex. Cr. R. 430, 157 S.W. 2d 899, on the authority of the Frye case. The Sanford case was appealed to the U. S. Supreme Court, where it was dismissed on the ground that it did not involve a federal question. Sanford v. Hill, 316 U. S. 647, 62 Sup. Ct. 1292, 86 L. ed. 1731."[2]

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[2] The percuriam in the Sanford case was delivered by the U. S. Supreme Court on June 1, 1942. Our Act 193 was adopted in 1943.

But we are here concerned with a portion of section 2 of the Act 193, the constitutionality of which portion has not been construed in a case where its provisions were at issue. The information on which the defendants were tried has been previously copied. In effect, it charged that Walter Ted Campbell, acting in concert with other persons, *assembled* where a labor dispute existed, and by force and violence prevented Otha Williams from working; and that "the said Roy Cole, Louis Jones and Jessie Bean . . . did unlawfully and feloniously, acting in concert with each other, promote, encourage and aid such unlawful assemblage [fol. 121] against the peace and dignity of the State of Arkansas." In short, the defendants, Cole and Jones, were charged with acting in concert, and promoting, encouraging and aiding the unlawful assemblage which prevented Otha Williams from engaging in a lawful occupation: So the defendants are charged with violating the final portion of section 2 of Act 193. Section 2 reads in its entirety:

> "It shall be unlawful for any person acting in concert with one or more other psesons, to assemble at or near any place where a 'labor dispute' exists and by force or violence prevent or attempt to prevent any person from engaging in any lawful voacation, or for any person acting either by himself, or as a member of any group or organization or acting in concert with one or more other persons, to promote, encourage or aid any such unlawful assemblage. Any person guilty of violating this section shall be deemed guilty of a felony, and upon conviction thereof shall be punished by confinement in the State Penitentiary for not less that one (1) year, nor more than two (2) years."

It is clear that this section charges two offenses, which we may for convenience refer to as "Offense A" and "Offense B." Offense A is embraced in the first 47 words of section 2, which read:

> "It shall be unlawful for any person acting in concert with one or more other persons, to assemble at or near any place where a 'labor dispute' exists and by force or violence prevent or attempt to prevent any person from engaging in any lawful vocation, . . ."

Offense A applies to any person acting in concert to assemble, at a place where labor dispute exists, and by force or violence, prevent or act to prevent any person from engaging in a lawful occupation. Offense B is embraced in in the first four words of section 2 plus words 48 to 82 of said section, and reads:

> "It shall be unlawful . . . for any person acting either by himself, or as a member of any group or organization or acting in concert with one or more other persons, to promote, encourage or aid *any such unlawful assemblage.* (italics supplied)

The words, "any unlawful assemble", as italicized above, relate to the assemblage in offense A, *supra,* so that offense B appelies to any person (1) acting individually or in con- [fol. 122] cert, etc., (2) to promote, encourage or aid "such unlawful assemblage" as that denounced in offence A, *supra,* —that is, an assemblage which by force and violence prevents or attempts to prevent any person from engaging in any unlawful vocation.

The question here to be decided is whether the promoting, encouraging or aiding "such unlawful assemblage" as contained in offense B is conduct which the State may denounce as an offence, and constitutionally prohibit. What is the "unlawful assemblage" which the Act prohibits in section 2-A?[5] It is one where persons acting in concert have assembled in an attempt to prevent by force or violance some other person from engaging in a lawful occupation. Keeping in mind such idea of an "unlawful assemblage," we come to offense B. Since the State can prohibit the unlawful assemblage denounced in section 2-A[5] (The constitutionality of which we have upheld),[4] then it seems clear that the State can also constitutionally prohibit by section 2-B[5] any person from promoting, encouraging or aiding "such unlawful assemblage." It would be idle to say that the State could punish the participants under section 2-A[5] and not be allowed to punish those aiding and abetting such assemblage under section 2-B.

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[4] See Smith and Brown v. State, *supra,* and Guerin v. State, *Supra.*

[5] See footnote on p. 122.

Ever since the inception of its Statehood, the State of Arkansas has had a statute which was aimed at preventing rioting.[4] Section 3503 Pope's Digest comes to us from chapter 44, Div. VIII, Art. L, Sec. 1 of the Revised Statutes of 1837; and reads:

> "If three or more persons assemble together with the [fol. 123] intent, or being assembled, shall agree, mutually, to assist each other to do an unlawful act, with force or violence, against the person or property of another, or against the peace or to the terror of the people, and shall accomplish the purpose intended, or do any unlawful act in furtherance of such purpose, in a violent or turbulent manner, every person so offending, or who shall aid or assist in doing any unlawful act, shall be adjudged guilty of a misdemeanor, and shall be punished by imprisonment not exceeding one year, or by a fine not exceeding five hundred dollars, or by both fine and imprisonment."

In Roberts v. State, 21 Ark. 183, decided in 1*906*, in a prosecution under the riot statute previously copied, in this court said:

> "Riot is defined to be a tumultous disturbance of the peace by three or more persons assembling together of their own authority, with an intent mutually to assist one another against any one who shall oppose them in the execution of some enterprise of a private nature, and afterward actually executing the same in a violent and turbulent manner, to the terror of the people, whether the act itself was lawful or unlawful. Whar. Crim. Law 722; 1 Hawk. P. C. chap. 65, sec. 1; State v. Conolly, 3 Rich. 337."

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[4] In Holdsworth's History of English Law, vol. 8, p. 324, *et seq.*, there is a history of the old laws against unlawful assemblage and kindred offenses. *Riots* grow from *routs*, and *routs* grow from unlawful assemblies, so in the quelling of an unlawful assembly, a possible riot is extinguished. Likewise, in Bishop on Criminal Law, 9th ed., sec. 1256, *et seq.*, there is contained a definition and discusssion of unlawful assembly. See also 66 C. J., *et seq.;* and Annotations in 58 A. L. R. 751 and 93 A. L. R. 737.

Section 2-B of said Act 193 of 1943 is aimed at the same generic offence as that towards which the riot statute was directed. As we will show in topic II, *infra*, dealing with the evidence, the defendants here actually participated in the acts of violence denounced in section 2-A, although these defendants are now only charged with aiding and encouraging the unlawful assemblage.

In Craig v. State, 195 Ark. 925, 114 S. W. 2d 1073 we had before us another conviction under the riot statute (section 3503 Pope's Digest, *supra*). In that case a labor dispute existed; and Craig, and at least two others, acting together pursuant to a common purpose, did engage in a riot. We upheld the conviction in that case; and the offense here involved is on the same type as that in the Craig case. [fol. 124] In Smith and Brown v. State, 207 Ark. 104, 179 S. W. 2d 188 the late and beloved Mr. Justice McHaney delivered the opinion of this court, which sustained the constitutionality of Act 193 of 1943, saying:

> "No one would seriously contend that force and violence, or intimidation and coercion, due thereto, are within the pale of constitutional protection. And the power to prohibit their exercise is within the police power of the state, acting through its legislature. 'The state,' said Judge Hart, in Huff v. State, 164 Ark. 211, 261 S. W. 654, 'has the power to determine what acts committed within its limits shall be deemed criminal.' Having done so here, and having classified the offense here denounced as a felony, it cannot be said to be an arbitrary or an unreasonable one when considered in connection with the public good it seeks to protect. There is here no question of a labor dispute or of the right of peaceful picketing, but even picketing when accompanied by force, violence, intimidation or coercion cannot find any protection under the constitutional guaranties of freedom of speech and freedom of the press. Local Union 313 v. Stathakis, 135 Ark. 86, 205 S. W. 450, 6 A. L. R. 894; Riggs v. Tucker Duck & Rubber Co., 196 Ark. 571, 119 S. W. 2d 507; Milk Dagon Drivers' Union v. Meadowmoore Dairies, 312 U. S. 287, 61 Sup. Ct. 552, 86 L. ed. 836, 132 A. L. R. 1200. In the last mentioned case, it was said: 'Freedom of speech and freedom of the press cannot be too often invoked as basic to our scheme of society. But these

> liberties will not be advanced or even maintained by denying to the states with all their resources, including the instrumentality of their courts, the power to deal with coercion due to extensive violence.'
>
> "There the Supreme Court reviewed and distinguished Thornhill v. Alabama, 310 U. S. 88, 60 Sup. Ct. 736, 84 L. ed. 1093, and Carlson v. California, 310 U. S. 106, 60 Sup. Ct. 746, 84 L. ed. 1104, and said: 'Entanglement with violence and expressly out of those cases.'
>
> "We conclude, therefore, that said Act 193 is not open to constitutional objection."

Appellants say that the statute prevents free assembly. We disagree with that statement. The Act prevents unlawful assemblages which cause violence and interfere with the rights of others. We hold: that section 2-B[5] charges a definite and certain offense; that it is within the power of the State to enact such a law; and that no provision of the State or Federal Constitutions or Amendments is trans- [fol. 125] gressed by section 2-B[5] of the Act here under scrutiny.

II. *Sufficiency of the Evidence.* The record in this case is the same record that was before us when we rendered our opinion as reported in 211 Ark. 836, 202 S. W. 2d 770. In that opinion we said:

> "Facts incident to the difficulty between Campbell and Williams are set out in the opinion of October 7, 1946. There is substantial testimony in the record before us that Cole was on the scene where a group of stirkers had gathered to await exit of Williams and others from the mill, five of the employees having remained at work. Cole carried a club, or walking stick. He told Willie Brown to go ahead, that 'they' were not after him—but, inferentially, were waiting for Williams. Jones said, 'Come on, boys', and the strikers 'flew up like black-birds and came fighting.' . . ."

Did the defendants "encourage, aid and abet the unlawful assemblage?" Witnesses testified that the defendants spent most of the day of December 26th at the place where the labor dispute was in progress. That an act of violence was agreed upon is shown by the thest-mony of the witnesses, Bishop Jackson:

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[5] In using the expressions "section 2-A" and "section 2-B," we mean, of course, offense A and offense B, as contained in Section 2 of said Act 193.

> "Q. You say you were down at the tent that morning?
> "A. Yes, sir.
> "Q. When these defendants here, Louis Jones and the others, were in a discussion and were talking about talking to the men that were working?
> "A. Yes, sir.
> "Q. And they agreed that if they didn't talk right, they were going to whip them?
> "A. Yes, sir."

In other words, on the morning of December 26th the defendants participated, aided, encouraged and abetted in an agreement with others to the effect that the worders (Otha Williams, et al.) would be whipped if they did not agree to quit work. That this assemblage was "unlawful" is shown by the evidence of the violence that was preformed in the afternoon of December 26th in keeping with the plan made that morning. The witness Willie Brown testified that, as he was leaving work that afternoon:

> "Q. Did you start on across the street?
> "A. Yes, sir.
> [fol. 126] "Q. All right, When you started across the street, did any of them say anything to you or any of the men you were with?
> "A. Yes, sir, Louis called Otha——
> "Q. That was Louis Jones?
> "A. Yes, sir, and told him to wait a minute, he wanted to talk to him, and Otha told him he didn't have time, he was on his way home and he would see him another day.
> "Q. Did he do anything else?
> "A. He gave a signal and said, 'Come on, boys.'
> "Q. He gave a signal and said, 'Come on, boys?'
> "A. Yes, sir.
> "Q. That was after Otha Williams told him he didn't have time, that he was on his way home?
> "A. Yes, sir.

"Q. What happened after Louis Jones gave the signal and said, 'Come on, boys?'

"A. They flew up like blackbirds and came fighting.

"Q. They flew up like b*al*ckbirds and came fighting?

"A. Yes, sir.

"Q. You didn't see Roy Cole before you went across the street?

"A. No, sir, I didn't see him.

"Q. Did you see Cole after that?

"A. Yes, sir, he told me to go ahead on, that they wasn't after me.

"Q. The defendant, Roy Cole, told you to go ahead on, that they wasn't after you?

"A. Yes, sir.

"Q. Did Cole have any kind of a weapon with him?

"A. Yes, sir, he had a stick.

"Q. He had a stick?

"A. Yes, sir."

It was in this encounter that a homicide occurred, so there is legally sufficient evidence that the appellants here, Cole and Jones, promoted, encouraged and aided the assemblage—which was unlawful because of its purpose and its accomplished results—and did, by the use of force and violence, attempt to prevent persons from engaging in a lawful vocation.

We therefore affirm the judgment of the lower court against Cole and Jones.

Mr. Justice Robins, Dissents.

Ed. F. McFaddin, Associate Justice.

Mr. Justice George Rose Smith did not participate in the consideration or determination of this case, it having been decided prior to January 1, 1949.

[fol. 127] Bond on petition for certiorari for $500.00 omitted in printing.

[fol. 128] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 129] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1948

No. —

ROY COLE and LOUIS JONES, Petitioners,

vs.

STATE OF ARKANSAS

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI

Upon consideration of the application of counsel for petitioner(s),

It is Ordered that the time for filing petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including May 10th, 1949.

Wiley Rutledge, Associate Justice of the Supreme Court of the United States.

Dated this 5th day of April, 1949.

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed June 13, 1949

The petition herein for a writ of certiorari to the Supreme Court of the State of Arkansas is granted. The case is transferred to the summary docket.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

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MAY 3 1949
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

October Term, [redacted] 1949

No. [redacted]62

ROY COLE and LOUIS JONES, *Petitioners*

v.

STATE OF ARKANSAS, *Respondent*

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ARKANSAS

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IN THE

Supreme Court of the United States

October Term, 1948

No.—

ROY COLE and LOUIS JONES, *Petitioners*

v.

STATE OF ARKANSAS, *Respondent*

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ARKANSAS

Roy Cole and Louis Jones pray that a writ of certiorari issue to review a decision of the Supreme Court of Arkansas rendered January 10, 1949, affirming judgments of the Pulaski Circuit Court, First Division, finding petitioners guilty of violating Act 193, Arkansas Acts of 1943 (Popes Digest Stats. Ark., 1944 Cum. Supp. p. 691).

OPINION BELOW

The opinion of the Supreme Court of Arkansas appears in the Record at p. 115, and is reported at 216 S.W. 2d 402, and at 23 LRRM 2334. It has not yet been officially reported.

JURISDICTION

The decree of the Supreme Court of Arkansas was entered on January 10, 1949 (R. 114). On April 5, 1949, Mr. Justice Rutledge signed an order extending the time for filing a petition for writ of certiorari to and including May 10, 1949 (R. 125). The jurisdiction of this Court is invoked under 28 U.S.C. 1257(2) and (3).

1. The Supreme Court of Arkansas affirmed judgments finding petitioners guilty of violating Act 193, Arkansas Acts of 1943, upon the basis of an interpretation of the statute different from that upon which the case was tried. Petitioners contend that the Arkansas supreme court thereby violated the due process clause of the Fourteenth Amendment, and disregarded or misinterpreted the opinion and mandate of this Court in this case at the last Term, *Cole* v. *Arkansas*, 333 U.S. 196. This claim was specially set up under the Constitution of the United States and under an authority exercised under the United States. The decision below in this regard is therefore reviewable by writ of certiorari under 28 U.S.C. 1257(3).

2. Petitioners contend that the information upon which they were tried was so vague and indefinite that it did not fairly inform them of the charges against them, in violation of the due process clause of the Fourteenth Amendment. This claim was specially set up under the Constitution of the United States. The decision below in this regard is therefore reviewable by writ of certiorari under 28 U.S.C. 1257(3).

3. Petitioners were convicted of violating Section 2 of Act 193 of the 1943 Arkansas Legislature. As stated by this Court upon the prior review (333 U.S. at 202), petitioners in the state supreme court had "raised serious objections to the validity of that section under the Fourteenth Amendment to the Federal Constitution." Among these objections, as listed by the Court in a footnote, were:

> "(1) that petitioners were deprived of freedom of speech and assembly by reason of their convictions under §2;
>
> (2) that their convictions were based upon a statute * * * too vague and indefinite to conform to due process * * *"

These objections were again renewed by petitioners upon the latest review of the case before the Arkansas supreme court.

There was thus drawn in question the validity of a state statute on the ground of its being repugnant to the Constitution, and the decision below was in favor of its validity. The decision below is therefore reviewable here by appeal under 28 U.S.C. 1257(2), or by certiorari under 28 U.S.C. 1257(3).

The jurisdiction of the Court more fully appears from the Statement and the Reasons for Granting the Writ.

QUESTIONS PRESENTED

1. Whether the state supreme court deprived petitioners of due process of law, and failed to give effect to the decision and mandate of this Court in this case at the last Term, by again affirming petitioners' convictions upon the basis of a construction of the state statute different from that upon which petitioners were charged and tried.

2. Whether petitioners were deprived of freedom of speech and assembly, in violation of the due process clause, by reason of their convictions under an Arkansas statute which makes criminal presence on a picket line where violence occurs.

3. Whether petitioners were deprived of due process of law because their convictions were based upon a charge and a statute too vague and indefinite to conform to due process.

STATUTE INVOLVED

Act 193, Acts of Arkansas 1943.
(Popes Digest Stats. Ark., 1944 Cum. Supp. p. 691)

Section 1. It shall be unlawful for any person by the use of force or violence, or threat of the use of force or violence, to prevent or attempt to prevent any person from engaging in any lawful vocation within this State. Any person guilty of violating this section shall be deemed guilty of a felony, and upon conviction thereof shall be punished by confinement in the State Penitentiary for not less than one (1) year, nor more than two (2) years.

Section 2. It shall be unlawful for any person acting in concert with one or more other persons, to assemble at or near any place where a "labor dispute" exists and by force or violence prevent or attempt to prevent any person from engaging in any lawful vocation, or for any person acting either by himself, or as a member of any group or organization or acting in concert with one or more other persons, to promote, encourage or aid any such unlawful assemblage. Any person guilty of violating this section shall be deemed guilty of a felony, and upon conviction thereof shall be punished by confinement in the State Penitentiary for not less than one (1) year, nor more than two (2) years.

Section 3. The term "labor dispute" as used in this Act shall include any controversy between an employer and two (2) or more of his employees concerning the terms or conditions of employment or concerning the association or representation of persons in negotiating, fixing, maintaining, changing or seeking to arrange terms or conditions of employment.

Section 4. The provisions of this Act shall be cumulative of all other existing articles of the Penal Code upon the same subject, and in the event of a conflict between existing articles and the provisions of this Act, then and in that event the provisions, offenses and punishments set forth herein shall prevail over such existing articles.

Section 5. If any section, paragraph, clause, or provision of this Act is declared unconstitutional, inoperative or invalid by any court of competent jurisdiction, the same shall not affect or invalidate the remainder of this Act.

STATEMENT

Cole and Jones, the petitioners, together with Jessie Bean, were originally indicted by an Arkansas Grand Jury for using "force and violence" to "prevent Otha Williams from engaging in work as a laborer at the Southern Cotton Oil Company" (R. 3). The indictment thus alleged a violation of Section 1 of Act 193 of the 1943 Arkansas Acts. The three defendants were convicted, but on appeal the Supreme Court of Arkansas reversed on a question of admissibility of evidence, and remanded for a new trial. *Cole et al.* v. *State*, 210 Ark. 433, 196 S.W. 2d 582.

Following the reversal, the Prosecuting Attorney filed the felony information involved in this proceeding. This information reads in full as follows (R. 1):

> Comes Sam Robinson, Prosecuting Attorney within and for Pulaski County, Arkansas, and in the name, by the authority, and on behalf of the State of Arkansas information gives accusing Roy Cole, Louis Jones and Jessie Bean of the crime of felony, committed as follows to-wit: On the 26th day of December, A. D. 1945, in Pulaski County, Arkansas, Walter Ted Campbell, acting in concert with other persons, assembled at the Southern Cotton Oil Company's plant in Pulaski County, Arkansas, where a labor dispute existed, and by force and violence prevented Otha Williams from engaging in a lawful vocation. The said Roy Cole, Louis Jones and Jessie Bean, in the County and State aforesaid, on the 26th day of December, 1945, did unlawfully and feloniously, acting in concert with each other, promote, encourage and aid such unlawful assemblage, against the peace and dignity of the State of Arkansas.

The information thus charged Cole, Jones and Bean with violating the second part of Section 2 of the Act, that concerning aiding an unlawful assemblage. It did not repeat the charge of the indictment that they by force and violence prevented Otha Williams from working; on the contrary, this conduct was attributed to Walter Ted Campbell, not a defendant.

At the trial, the following facts appeared:

Petitioners are two Negroes,[1] who were employed by the Southern Cotton Oil Company in North Little Rock, Arkansas. On December 17, 1945, about 112 of the plant's workers, including petitioners, went out on strike for higher wages and shorter hours; five workers remained in the plant (R. 14-16, 70, 71, 85). On December 26, 1945, the five non-striking workers left the plant in a group at the close of work. Near the plant and across a railroad track was a group of about four of the strikers. The testimony differs as to their identity and number, but some of the state's testimony placed Cole and Jones in the group. One of the strikers, identified by the state's witnesses over his denial as Louis Jones, called to Otha Williams, one of the non-strikers, and asked him to wait.

---

[1] The record designated negro witnesses by the symbol "(CM)." See R. 70 (Jones), 77 (Cole). The same symbol is used in the information (R. 1).

Williams refused. Walter Ted Campbell, a striker, then attacked Williams. The two men fought, and Williams used a pocket knife and killed Campbell (R. 19-22, 24, 25, 28, 29, 34-36, 42-45, 76). The record is clear that no one other than Campbell attacked, fought or hit Williams (R. 37, 38, 45, 54, 55), nor does the record show any violence or physical conflict other than that between Williams and Campbell.[3]

At the conclusion of the trial, the court, after reading Section 2 of Act 193 to the jury, gave the following instruction (R. 94):

> You are instructed that this section of the Act includes two offenses, first, the concert of action between two or more persons resulting in the prevention of a person by means of force and violence from engaging in a lawful vocation. And, second, in promoting, encouraging or aiding of such unlawful assemblage by concert of action among the defendants as is charged in the information here. The latter offense is the one on trial in this case.

The court also gave the following instruction (R. 95):

> If you believe from the evidence in this case beyond a reasonable doubt that on or about the 26th day of December, 1945, Walter Campbell, acting in concert with other persons, assembled at the Southern Cotton Oil Company's plant in Pulaski County, Arkansas, where a "labor dispute" existed and by force and violence prevented Otha Williams from engaging in a lawful vocation; and if you further believe beyond a reasonable doubt that the defendants wilfully, unlawfully and feloniously, which [sic] acting in concert with each other, promoted, encouraged and aided such unlawful assemblage, you will convict the defendants as charged in the indictment.

All three defendants were again convicted, and were each sentenced to serve a year in the state penitentiary (R. 25, 26,

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[3] Willie Brown, one of the five workers, testified that after Williams refused to stop, Louis Jones gave a signal and said "Come on, boys," after which "they flew up like blackbirds and came fighting" (R. 21). However, no testimony is in the record of any blow struck other than in the Campbell-Williams fight, and Brown left the scene unmolested and on Cole's suggestion, after seeing Campbell strike Williams (R. 21, 22, 79). Willie Johnson and Elvie Washington, two of the five workers, ran away (R. 31, 32, 36); and the movements of the fifth worker (Lawrence Cross), who did not testify, are not in the record.

27). Petitioners and Bean again appealed, on the ground, among others, that Section 2, if construed to sustain the conviction, was unconstitutional.

On appeal, the Supreme Court of Arkansas, with one Justice dissenting, affirmed the convictions of petitioners Cole and Jones (R. 104). The conviction of Bean was reversed (two Justices dissenting) with directions that the case be dismissed as to him, on the ground that the evidence was not sufficient to sustain his conviction (R. 104-105).

In its opinion the Supreme Court of Arkansas asserted that the information accused petitioners of using force and violence to prevent Williams from working; that such conduct was made unlawful by Section 1; that it was therefore unnecessary to consider the questions which were raised as to the constitutionality of Section 2; and that there was evidence to sustain the convictions (R. 106-107). One Justice dissented on the latter point (R. 108).

A petition for rehearing was filed, which pointed out that the convictions had been affirmed under an entirely different section of the statute than that which petitioners had been charged with, and tried for, violating (R. 108-109). The petition also urged that this variance deprived petitioners of due process (*Id.*). The petition for rehearing was promptly denied (R. 109.)

This Court granted certiorari (332 U.S. 834), and unanimously reversed the convictions. This Court pointed out (333 U.S. at 200 and 201) that the trial judge had:

> charged the jury that petitioners were on trial for the offense of promoting an unlawful assemblage, not for the offense "of using force and violence"

but that the state supreme [illegible]urt had affirmed the convictions of petitioners "as though they had been tried for violating § 1, an offense for which they were neither tried nor convicted."

This Court declared (333 U.S. at 202):

> To conform to due process of law, petitioners were entitled to have the validity of their convictions appraised on consideration of the case as it was tried and as the issues were determined in the trial court.

On remand, the Supreme Court of Arkansas, on October 25, 1948, handed down an opinion again affirming the convictions of petitioners. This opinion has since been withdrawn by the court, and is not included in the transcript of record certified by its clerk, but is unofficially reported at 23 LRRM 2022. In this opinion the Arkansas supreme court stated (23 LRRM 2024):

> Insofar as it involves the case herein before us, Sec. 2 of the Act requires as essential to a conviction a finding of concurrent facts as follows:
>
> (1) The defendants "acting in concert with one or more persons";
>
> (2) Did assemble at or near a place;
>
> (3) Where a labor dispute exists; and
>
> (4) By force or violence did prevent or attempt to prevent Otha Williams from engaging in any lawful vocation.
>
> The remaining portion of Sec. 2 of the Act relates to a situation not involved in this case, and will be later discussed. The four essentials above are the only ones that we need consider in weighing the facts here.

The court then went on to review the evidence on each of these four points and concluded (23 LRRM 2025):

> There is sufficient evidence to support the verdict of the jury that the defendants "by force or violence prevented or attempted to prevent" Otha Williams "from engaging in any lawful vocation" at the time and place where these defendants, acting in concert, were assembled near a place where a labor dispute existed.

The Supreme Court of Arkansas then repeated (23 LRRM 2025):

> Now, as previously stated, there is other language in Sec. 2 which reads: "* * * or for any person acting either by himself, or as a member of any group or organizations or acting in concert with one or more other persons, to promote, encourage or aid any such unlawful assemblage * * *."
>
> We express no opinion on the validity or effect of this language until a case involving it is duly presented to us. This last quoted language relates to an offense entirely different from the case here at bar.

The court then went on to sustain the constitutionality of the first part of Section 2 of the Act.

A petition for rehearing was once more filed. It pointed out that the Arkansas supreme court, in violation of due process and in disregard of the opinion of this Court, had again reviewed the conviction as if it were for using force and violence, although petitioners had been tried only for aiding an unlawful assemblage. This time the court had reviewed the conviction under the first part of Section 2, instead of under Section 1, but while both of those provisions deal with the use of force and violence to prevent another from working, the latter part of Section 2 deals with aiding an unlawful assemblage, and it was only on the latter charge that petitioners had been tried.

Following the filing of this petition the Arkansas supreme court withdrew its opinion, and on January 10, 1949, it handed down its fourth opinion.[*] It is this opinion and judgment which petitioners now ask this Court to review.

In this opinion of January 10, 1949 the Arkansas supreme court affirms the convictions for the third time, and advances its third version as to the nature of petitioners' offense. This time the court, for the first time, purports to review the conviction under the latter part of Section 2, which makes it unlawful "for any person * * * to promote, encourage or aid in such unlawful assemblage." "Such unlawful assemblage" the opinion declares, refers to an assemblage of the type denounced in the first part of Section 2, that is "one where persons acting in concert have assembled in an attempt to prevent by force or violence some other person from engaging in a lawful occupation." (R. 119). The opinion then goes on to declare that the statute in question "is aimed at the same generic offense" as an earlier statute making it a crime to "assemble together with the intent" to riot (R. 102-121), and that the present statute is constitutional (R. 122). The opinion then reviews the evidence and concludes that the "defendants participated, aided, encouraged and abetted in an agreement with others to the effect that the workers * * * would be whipped if they did not agree to quit work" (R. 122-124). Summing up, the opinion concludes that the assemblage was unlawful "because of its purpose and its accomplished results" (R. 124).

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[*] The statement in the second sentence of the opinion "that this is the third opinion of this court" ignores the withdrawn opinion of October 25, 1948, which the court had likewise labeled as its third.

Thus the Arkansas supreme court in its latest opinion apparently interprets the second part of Section 2 as applying only to those who "aid" the "assemblage"—that is, participate in picketing—with the purpose or intention that force and violence be used to prevent others from working.

REASONS FOR GRANTING THE WRIT

1. The Supreme Court of Arkansas failed to give proper effect to the decision and mandate of this Court in this case at the last Term. In *Cole* v. *Arkansas*, 333 U.S. 196, this Court reversed a prior judgment of the Arkansas supreme court because of variance between the interpretation of the statute upon which the case had been tried and the construction given the statute by the state supreme court in affirming the convictions. The latest decision of the Supreme Court of Arkansas is subject to the same infirmity.

The information by which petitioners were charged (set out *supra* p. 5) and the trial court's instructions to the jury (set out *supra* p. 6) clearly required nothing more for conviction than that the defendants were present on a picket line where violence did in fact occur. Neither the information nor the instructions included as an element of the offense the requirement that the defendants shall have participated in the picket line with the "purpose" that force and violence be used.

In contrast, the latest opinion of the Arkansas supreme court, as detailed *supra* pp. 9-10, apparently reads into the statute the requirement that the accused must have intended, or had the purpose, that force and violence would be used on the picket line. This element of "purpose," or advance "agreement" to use force and violence was no part of the offense charged in the information or defined by the judge to the jury. It was read into the statute for the first time in the last opinion of the Arkansas supreme court, just as in two earlier opinions it had read in a requirement of actual participation in force and violence by the defendants.[4] In thus affirming the convictions, and sustaining the constitutionality of the statute, upon the basis of a construction of the the statute different from that upon which the case had been tried and submitted to the jury, the state supreme court again violated the due process clause of the Fourteenth Amendment, and failed to give effect to the opinion of this Court.

2. As this Court stated in its opinion on the prior appeal (333 U.S. at 201) petitioners, in the state supreme court, had

> also raised serious objections to the validity of that section under the Fourteenth Amendment to the Federal Constitution

including the contention—

> that petitioners were deprived of freedom of speech and assembly by reason of their convictions under § 2.

This issue is again presented and given even sharper focus by the latest decision of the Arkansas supreme court.

Literally read, the statutory provision under which petitioners were tried and convicted makes it a felony for any person to "promote, encourage or aid" any assemblage at or near any place where a labor dispute exists. So read, the statute clearly violates rights of free speech and assembly which the due process clause of the Fourteenth Amendment protects from infringement by the states. *Carlson* v. *California*, 310 U.S. 106; *Thornhill* v. *Alabama*, 310 U.S. 88; *AFL* v. *Swing*, 312 U.S. 321. Those cases establish that striking laborers have a constitutional right to assemble peaceably near the plant which is struck and to express their views on the matter in controversy.

If the statute is construed, as it was by the trial court and as it can be with a small sacrifice of literalness, as making the encouragement of such assemblage felonious only if some member of the assembly (who need not be the person tried) engages in violence or threats to prevent persons from working, it still violates constitutional rights as established by the cited cases. Unlike the statute before this Court in *Giboney* v. *Empire Storage and Ice Company,* 69 Sup. Ct. 684, the Arkansas statute, so construed, does not make picketing for particular purposes unlawful. Rather, if violence occurs, picketing becomes retroactively a felony. Such a statute, furthermore, violates due process by departing from the principle that guilt is personal and is not to be imputed to one person for another's misconduct. *Kotteakos* v. *U.S.*, 328 U.S. 750, 773; *De Jonge* v. *Oregon*, 299 U.S. 353; *Bridges* v. *Wixon*, 326 U.S. 135; *Schneiderman* v. *U.S.*, 320 U.S. 118, 136.

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[4] In its last opinion the state supreme court continues to insist that the defendants "actually participated in the acts of violence" although it concedes that they "are now only charged with aiding and encouraging the unlawful assemblage."

As stated, it is our understanding that the latest decision of the Arkansas supreme court, in an evident attempt to save the constitutionality of the statute, interprets it as applying only to the aiding of an assembly formed for the purpose of engaging in violence. But such a construction cannot save the statute, for two reasons.

In the first place, no such limited construction was given the jury. It could have found guilt under the court's instructions merely by finding that the defendants were present on a picket line where violence did in fact occur. A statute which is invalid if taken at face value cannot be saved by a construction not submitted to the jury.

In the second place, a statute which regulates speech and assembly is judged not only by the construction which the courts may ultimately give it, but by the inhibiting effect its general words may have upon the exercise of constitutionally protected rights of speech and assembly. *Thomas* v. *Collins*, 323 U.S. 516. In practical effect, the statute under which petitioners were convicted constitutes a device to evade, through obscurity of language and application, the constitutional protections accorded the rights to picket by such cases as *Thornhill* v. *Alabama, supra* and *AFL* v. *Swing, supra.* According to the trial court mere presence on a picket line where violence in fact occurs is a felony. According to the state supreme court those present on a picket line may be convicted of a felony if violence occurs and the court thereafter concludes that the picket line was assembled for the purpose of using violence. Under either construction a worker engaging in

Arkansas in his constitutional right to picket is under such hazard and such danger of committing a felony that his constitutional right is rendered meaningless.

This statutory provision and its application in this case have hindered efforts of the Congress of Industrial Organizations to organize employees in Arkansas. The assembling of striking workers is handicapped by their warranted fear that their mere assembling, no matter how peaceful their intentions and conduct, may subject any one of them to a felony conviction. The same situation exists in Texas, whose statute was copied by Arkansas. Art. 1621b, Texas Penal Code, as amended by c. 100, Acts 1951; Vernon's Ann. Penal Code, art. 1621b. It is possible that other states will imitate these statutes in view of their effectiveness in hampering organized labor. It is therefore of great importance to the labor movement that the constitutionality of this statute be reviewed by this court.

3. That the convictions were based upon a charge and a statute too vague and indefinite to conform to due process could, by this time, hardly be more manifest. The information under which petitioners were tried has in successive opinions of the Arkansas supreme court been held to charge a crime under Section 1 of the statute; then under the first part of Section 2; and finally under the latter part of Section 2. An information which so utterly confuses the state supreme court as to what crime it charges can hardly be said fairly to have informed the accused to the nature of the charges against them. For while the Arkansas supreme court has never doubted that these two colored boys were guilty, it has never been sure of what.

The statute itself likewise fails to meet the constitutional tests of definiteness. The portion of Section 2 involved in the present case makes it a crime to permit, encourage or aid "any such unlawful assemblage." The term "unlawful assemblage" is nowhere defined, though undoubtedly it was meant to refer in some fashion to the first portion of Section 2. That part of Section 2 does not deal with assemblages, however, but makes it a crime to assemble at a place where a labor dispute exists and by force or violence prevent a person from working. The trial court never specifically defined "unlawful assemblage" to the jury but told it, in effect, that an assemblage which resulted in the use of force and violence to prevent a person from working was unlawful. The state supreme court added the requirement that the picket line must have assembled for the purpose of using violence. Perhaps the construction given the statute by the trial court might have been fairly anticipated "in advance of judicial utterance" (*Lanzetta* v. *New Jersey*, 306 U.S. 451, 456), but certainly the construction of the appellate court could not. And the standards of definiteness which criminal statutes must meet under the due process clause are particularly stringent in the case of statutes which, like the present, are restrictive of free speech and assembly. *Winters* v. *New York*, 333 U.S. 507, 509-510; *Thomas* v. *Collins*, *supra*.

CONCLUSION

For the reasons stated it is respectfully submitted that this petition for a writ of certiorari should be granted.

Respectfully submitted,

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IN THE

Supreme Court of the United States

October Term, 1949

No. 62

62

ROY COLE and LOUIS JONES, *Petitioners*

v.

STATE OF ARKANSAS, *Respondent*

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF ARKANSAS

BRIEF FOR THE PETITIONERS

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BRIEF FOR THE PETITIONERS

OPINION BELOW

The opinion of the Supreme Court of Arkansas appears in the Record at p. 115, and is reported at 216 S.W. 2d 402, and at 23 LRRM 2334. It has not yet been officially reported.

JURISDICTION

The decree of the Supreme Court of Arkansas was entered on January 10, 1949 (R. 114). On April 5, 1949, Mr. Justice Rutledge signed an order extending the time for filing a petition for writ of certiorari to and including May 10, 1949 (R. 125). This Court granted certiorari on June 13, 1949. 337 U.S. 929. The jurisdiction of this Court rests on 28 U.S.C. 1257(2) and (3).

STATUTE INVOLVED

Act 193, Acts of Arkansas, 1943

(Popes Digest Stats. Ark., 1944 Cum. Supp. p. 691)

Section 1. It shall be unlawful for any person by the use of force or violence, or threat of the use of force or violence, to prevent or attempt to prevent any person from engaging in any lawful vocation within this State. Any person guilty of violating this section shall be deemed guilty of a felony, and upon conviction thereof shall be punished by confinement in the State Penitentiary for not less than one (1) year, nor more than two (2) years.

Section 2. It shall be unlawful for any person acting in concert with one or more other persons, to assemble at or near any place where a "labor dispute" exists and by force or violence prevent or attempt to prevent any person from engaging in any lawful vocation, or for any person acting either by himself, or as a member of any group or organization or acting in concert with one or more other persons, to promote, encourage or aid any such unlawful assemblage. Any person guilty of violating this section shall be deemed guilty of a felony, and upon conviction thereof shall be punished by confinement in the State Penitentiary for not less than one (1) year, nor more than two (2) years.

Section 3. The term "labor dispute" as used in this Act shall include any controversy between an employer and two (2) or more of his employees concerning the terms or conditions of employment or concerning the association or representation of persons in negotiating, fixing, maintaining, changing or seeking to arrange terms or conditions of employment.

Section 4. The provisions of this Act shall be cumulative of all other existing articles of the Penal Code upon the same subject, and in the event of a conflict between existing articles and the provisions of this Act, then and in that event the provisions, offenses and punishments set forth herein shall prevail over such existing articles.

Section 5. If any section, paragraph, clause, or provision of this Act is declared unconstitutional, inoperative or invalid by any court of competent jurisdiction, the same shall not affect or invalidate the remainder of this Act.

STATEMENT

Cole and Jones, the petitioners, together with Jessie Bean, were originally indicted by an Arkansas state court grand jury in January, 1946, for using "force and violence" to "prevent Otha Williams from engaging in working as a laborer at the Southern Cotton Oil Company" (R. 6). The indictment was thus evidently meant to allege a violation of Section 1 of Act 193 of the 1943 Arkansas Acts, set out above, or possibly a violation of the first part of Section 2 of that Act.

The three defendants were convicted, but on appeal the Supreme Court of Arkansas reversed on a question of admissibility of evidence, and remanded for a new trial. *Cole et al.* v. *State*, 210 Ark. 433, 196 S.W. 2d 582.

Following the reversal, the Prosecuting Attorney filed the felony information involved in this proceeding. This information reads in full as follows (R. 1):

> Comes Sam Robinson, Prosecuting Attorney within and for Pulaski County, Arkansas, and in the name, by the authority, and on behalf of the State of Arkansas information gives accusing Roy Cole, Louis Jones and Jessie Bean of the crime of felony, committed as follows to-wit: On the 26th day of December, A. D. 1945, in Pulaski County, Arkansas, Walter Ted Campbell, acting in concert with other persons, assembled at the Southern Cotton Oil Company's plant in Pulaski County, Arkansas, where a labor dispute existed, and by force and violence prevented Otha Williams from engaging in a lawful vocation. The said Roy Cole, Louis Jones and Jessie Bean, in the County and State aforesaid, on the 26th day of December, 1945, did unlawfully and feloniously, acting in concert with each other, promote, encourage and aid such unlawful assemblage, against the peace and dignity of the State of Arkansas.

The information thus charged Cole, Jones and Bean with violating the second part of Section 2 of the Act, which deals with aiding an unlawful assemblage. It did not repeat the charge of the earlier indictment that they by force and violence prevented Otha Williams from working; on the contrary, this conduct was attributed to Walter Ted Campbell, who, being deceased, was not indicted.

The testimony at the trial may be briefly summarized as follows:

Petitioners are two Negroes,[1] who were employed by the Southern Cotton Oil Company in North Little Rock, Arkansas. On December 17, 1945, about 112 of the plant's 117 workers, including petitioners, went out on strike for higher wages—sixty cents an hour—and an eight hour day (R. 14-16, 62-63). Five employees did not strike, and continued to work (*Id*). On December 26, 1945, the five non-striking employees left the plant in a group at the close of work. Near the plant and across a railroad track were several of the strikers. The testimony differs as to their identity and number, but some of the state's testimony placed Cole and Jones in the group. One of the strikers, identified by the state's witnesses over his denial as Louis Jones, called to Otha Williams, one of the non-strikers, and asked him to wait. Williams refused. Walter Ted Campbell, a striker, then attacked Williams. The two men fought, and Williams killed Campbell with a pocket knife (R. 19-22, 24, 25, 28, 29, 34-36, 42-45, 76). Williams then proceeded to his home (R. 45), the other four non-strikers having already left the scene of the fight (R. 21-22, 31-32, 36, 79). The record is clear that no one other than Campbell attacked, fought or hit Williams (R. 37, 38, 45, 54, 55).

Shortly thereafter the Company secured a state court injunction against further picketing, and within two or three weeks the plant resumed full production (R. 16).

At the conclusion of the trial, the court read Section 2 of Act 193 to the jury, but not Section 1. And it gave the following instruction as to the meaning of Section 2 (R. 94):

> You are instructed that this section of the Act includes two offenses, first, the concert of action between two or more persons resulting in the prevention of a person by means of force and violence from engaging in a lawful vocation. And, second, in promoting, encouraging or aiding of such unlawful assemblage by concert of action among the defendants as is charged in the information here. The latter offense is the one on trial in this case.

---

[1] The record designates Negro witnesses by the symbol "(CM)." See R. 70 (Jones), 77 (Cole). The same symbol is used in the information (R. 1).

The court also gave the following instruction (R. 95):

> If you believe from the evidence in this case beyond a reasonable doubt that on or about the 26th day of December, 1945, Walter Campbell, acting in concert with other persons, assembled at the Southern Cotton Oil Company's plant in Pulaski County, Arkansas, where a "labor dispute" existed and by force and violence prevented Otha Williams from engaging in a lawful vocation; and if you further believe beyond a reasonable doubt that the defendants wilfully, unlawfully and feloniously, which [sic] acting in concert with each other, promoted, encouraged and aided such unlawful assemblage, you will convict the defendants as charged in the indictment.

All three defendants were again convicted, and were each sentenced to serve a year in the state penitentiary (R. 25, 26, 27). Petitioners and Bean again appealed, on the ground, among others, that Section 2, if construed to sustain the conviction, was unconstitutional.

The Supreme Court of Arkansas, with one Justice dissenting, affirmed the convictions of petitioners Cole and Jones (R. 104). The conviction of Bean was reversed (two Justices dissenting) with directions that the case be dismissed as to him, on the ground that the evidence was not sufficient to sustain his conviction (R. 104-105).

In its opinion the Supreme Court of Arkansas asserted that the information accused petitioners of using force and violence to prevent Williams from working; that such conduct was made unlawful by Section 1; that it was therefore unnecessary to consider the questions which were raised as to the constitutionality of Section 2; and that there was evidence to sustain the convictions of Cole and Jones (R. 106-107). One Justice dissented on the latter point (R. 108).

A petition for rehearing was filed, which pointed out that the convictions had been affirmed under an entirely different section of the statute than that which petitioners had been charged with, and tried for, violating (R. 108-109). The petition also urged that this variance deprived petitioners of due process (*Id.*). The petition for rehearing was promptly denied (R. 109.)

This Court granted certiorari (332 U.S. 834), and unanimously reversed the convictions (333 U. S. 196). This Court pointed out (333 U. S. at 200-201) that the trial judge had:

> charged the jury that petitioners were on trial for the offense of promoting an unlawful assemblage, not for the offense "of using force and violence"

but that the State Supreme Court had affirmed the convictions of petitioners "as though they had been tried for violating § 1, an offense for which they were neither tried nor convicted.".

This Court held that the Supreme Court of Arkansas had thereby deprived petitioners of procedural due process, in two respects. In the first place, the Arkansas Supreme Court had affirmed petitioners' convictions upon a charge on which they had never been tried. This court declared (333 U. S. at 201):

> It is as much a violation of due process to send an accused to prison following conviction of a charge on which he was never tried as it would be to convict him upon a charge that was never made.

Secondly, this Court held that the proceedings in the Arkansas Supreme Court were a part of the process of law under which petitioners' convictions must stand or fall, and that those proceedings violated due process by denying petitioners fair review of the issues raised by them in the trial court, and upon which they had appealed. With respect to this point, this Court said (333 U. S. at 202):

> To conform to due process of law, petitioners were entitled to have the validity of their convictions appraised on consideration of the case as it was tried and as the issues were determined in the trial court.

On remand, the Supreme Court of Arkansas, on October 25, 1948, handed down an opinion again affirming the convictions of petitioners. This opinion has since been withdrawn by the court, and is not included in the transcript of record certified by its clerk, but is unofficially reported at 23 LRRM 2022. In this opinion the Arkansas Supreme Court stated (23 LRRM 2024):

> Insofar as it involves the case herein before us, Sec. 2 of the Act requires as essential to a conviction a finding of concurrent facts as follows:
>
> (1) The defendants "acting in concert with one or more persons";
>
> (2) Did assemble at or near a place;
>
> (3) Where a labor dispute exists; and
>
> (4) By force or violence did prevent or attempt to prevent Otha Williams from engaging in any lawful vocation.
>
> The remaining portion of Sec. 2 of the Act relates to a situation not involved in this case, and will be later discussed. The four essentials above are the only ones that we need consider in weighing the facts here.

The court then went on to review the evidence on each of these four points and concluded (23 LRRM 2025):

> There is sufficient evidence to support the verdict of the jury that the defendants "by force or violence prevented or attempted to prevent" Otha Williams "from engaging in any lawful vocation" at the time and place where these defendants, acting in concert, were assembled near a place where a labor dispute existed.

The state court then repeated (23 LRRM 2025):

> Now, as previously stated, there is other language in Sec. 2 which reads: "* * * or for any person acting either by himself, or as a member of any group or organization or acting in concert with one or more other persons, to promote, encourage or aid any such unlawful assemblage * * *."
>
> We express no opinion on the validity or effect of this language until a case involving it is duly presented to us. This last quoted language relates to an offense entirely different from the case here at bar.

The court then went on to sustain the constitutionality of the first part of Section 2 of the Act.

A petition for rehearing was once more filed. It pointed out that the Arkansas Supreme Court, in violation of due process and in disregard of the opinion of this Court, had again reviewed the convictions as if they were for using force and violence, although petitioners had been tried only for aiding an unlawful assemblage. This time the court had reviewed the conviction under the first part of Section 2, instead of under Section 1, but while both of those provisions deal with the use of force and violence to prevent another from working, the latter part of Section 2 deals with aiding an unlawful assemblage, and it was only on the latter charge that petitioners had been tried.

Following the filing of this petition the Arkansas Supreme Court withdrew its opinion, and on January 10, 1949, it handed down its fourth opinion [3] (R. 115). It is this opinion and judgment which is now before this Court for review.

In its latest opinion, the Arkansas Supreme Court affirms the convictions for the third time, and at last purports to review the sufficiency of the evidence to sustain the convictions under the latter part of Section 2, that dealing with aiding an unlawful assemblage. It is, however, by no means clear from the opinion whether or not the State Supreme Court reviewed the convictions upon the basis of the interpretation of the statute and of the information upon which the case was tried, or whether, in disregard of this Court's opinion and mandate, it again reviewed the convictions upon the basis of a construction of the statute and information different from that upon which the case was tried.

As appears *supra* pp. 3–5, the theory on which petitioners were tried required nothing more for conviction than that the petitioners were present on a picket line where violence to prevent another from working did in fact occur. While some parts of the latest opinion of the Arkansas Supreme Court seem to give the statute the same construction, other portions of that opinion apparently read into the latter part of Section 2 the requirement that the accused must have promoted the assemblage with the intention that force and violence would be used to prevent a person from working.

Thus, the opinion first construes the latter part of Section 2 as applying to any person who promotes or aids "an assemblage which by force or violence prevents or attempts to prevent any person from engaging in any lawful vocation"

---

[3] The statement in the second sentence of the opinion "that this is the third opinion of this court" ignores the withdrawn opinion of October 25, 1948, which the court had likewise labeled as its third.

(R. 119). In the very next paragraph, however, the opinion defines the unlawful assemblage prohibited by the Act as one where persons "have assembled in an attempt to prevent by force or violence" some other person from working. The opinion then goes on to declare that the statute in question "is aimed at the same generic offense" as an earlier statute making it a crime to "assemble together with the intent" to riot (R. 120-121), and to uphold the constitutionality of the statute in part upon that analogy (R. 122).

Next, however, the opinion again reverts to the construction given the statute by the trial court (R. 122):

> The Act prevents unlawful assemblages which cause violence and interfere with the rights of others.

Finally, after reviewing the evidence, the opinion states that the "defendants participated, aided, encouraged and abetted in an agreement with others to the effect that the workers * * * would be whipped if they did not agree to quit work" (R. 122-124). Summing up, the opinion concludes that the assemblage was unlawful "because of its purpose and its accomplished results" (R. 124).

Thus, it is impossible to say whether or to what extent the Arkansas Supreme Court, in its latest opinion, read into the statute a requirement that the accused must have promoted the assemblage with the intention that violence would there be used.

This Court granted certiorari, and ordered the case placed on its summary docket, on June 13, 1949. 337 U. S. 929.

SPECIFICATION OF ERRORS TO BE URGED

The Supreme Court of Arkansas erred:

1. In depriving petitioners of procedural due process in violation of the Fourteenth Amendment.

2. In disregarding, and failing to give proper effect to the opinion and mandate of this Court at the 1947 Term in *Cole* v. *Arkansas*, 333 U.S. 196.

3. In affirming the convictions of petitioners upon the basis of a construction of the state statute (the second part of Section 2 of Act 193, Acts of Arkansas, 1943) different from

that upon which petitioners had been charged and tried, thereby depriving petitioners of procedural due process, in violation of the Fourteenth Amendment.

4. In affirming petitioners' convictions upon a charge on which they had not been tried, thereby depriving petitioners of procedural due process, in violation of the Fourteenth Amendment.

5. In refusing to review the issues upon which petitioners appealed to it from the trial court, thereby depriving petitioners of procedural due process, in violation of the Fourteenth Amendment.

6. In affirming the convictions of petitioners under a statute (the second part of section 2 of Act 193, Acts of Arkansas, 1943) which makes it a crime to be present on a picket line where violence is used to prevent a person from working, thereby depriving petitioners of freedom of speech and assembly, in violation of the due process clause of the Fourteenth Amendment.

7. In affirming the convictions of petitioners under a statute which is vague and indefinite and which restricts free speech and assembly, in violation of the due process clause of the Fourteenth Amendment.

8. In affirming the convictions of petitioners under a statute and charge so indefinite as to deprive petitioners of procedural due process, in violation of the Fourteenth Amendment.

9. In affirming, and in failing to reverse, the convictions of petitioners.

ARGUMENT

Due to the ambiguity of the latest opinion of the Arkansas Supreme Court construing the state statute (Act 193, Acts of Arkansas, 1943, set out *supra*, p. 2), our argument necessarily rests upon alternative assumptions as to the opinion's meaning. Assuming, first, that the State Supreme Court has construed the statute as requiring that the accused must have aided the assemblage (participated in picketing) with the intention that force and violence would be used to prevent another from working, we urge that, by thus affirming the convictions upon an interpretation of the statute different from that upon which petitioners were tried, the decision below deprived petitioners of procedural due process, in violation of the Fourteenth Amendment, under the decision of this Court in this case last year. *Cole* v. *Arkansas*, 333 U.S. 196. Secondly, we argue that the state statute restricts freedom of speech and assembly in violation of the due process clause of the Fourteenth Amendment: we urge this contention both upon the assumption above stated and upon the alternative assumption that the State Supreme Court's decision construes the statute as requiring nothing more for conviction than that the accused were picketing at a time and place where another used violence to prevent a person from working. Thirdly, regardless of what meaning be given to the latest decision of the Arkansas Supreme Court, we urge that petitioners were deprived of due process of law because their convictions were based upon a charge and a statute too vague and indefinite to conform to constitutional requirements.

I.

THE DECISION OF THE SUPREME COURT OF ARKANSAS DEPRIVED PETITIONERS OF PROCEDURAL DUE PROCESS

Last year this Court held that a prior decision of the Arkansas Supreme Court in this case deprived petitioners of procedural due process. *Cole* v. *Arkansas*, 333 U.S. 196. It is petitioners' contention that the latest decision of the Arkansas court, if it reads into the statute the requirement that the accused must have intended that force and violence be used to prevent another from working, again denies procedural due process to petitioners, in precisely the same ways as before, and that it fails to give proper effect to the decision and mandate of this Court.

In its decision last year this Court held that the Arkansas Supreme Court, by giving to the information a construction different from that which had been given it by the trial court, and by affirming the convictions upon the basis of its construction, had deprived petitioners of procedural due process in two different, although interrelated, ways. This Court held, in the first place, that the new interpretation given the information by the State Supreme Court had resulted in petitioners standing convicted of a charge on which they had not been tried. And this Court declared (333 U.S. at 201):

> It is as much a violation of due process to send an accused to prison following conviction of a charge on which he was never tried as it would be to convict him upon a charge that was never made.

This Court pointed out, secondly, that the State Supreme Court, as a result of its giving the information a construction different from that upon which the case had been tried, had failed to review the issues which petitioners had raised in the trial court and upon which they had appealed. And this Court held that since the proceedings in the State Supreme Court "are a part of the process of law under which the petitioners' convictions must stand or fall" this denial of review violated procedural due process.

We will undertake to show that the latest decision of the Arkansas Supreme Court, under the assumption as to its meaning stated above, deprived petitioners of procedural due process in precisely the same ways as did its earlier decision. Upon that assumption, the Arkansas Supreme Court has given the statute a construction different from that upon which the case was tried. As a first result, petitioners again stand convicted of a charge upon which they were not tried. And as a second result, the State Supreme Court has again in effect refused to review the issues upon which petitioners appealed to it.

1. The information by which petitioners were charged (set out *supra* p. 3) and the trial court's instructions to the jury (set out *supra* pp. 4–5), required nothing more for conviction than that the defendants were participating in picketing when violence was used by another picket to prevent a person from working. Neither the information nor the instructions included as an element of the offense any requirement that the defendants must have participated in the picketing with the intention or knowledge that force and violence would be used.

Specifically, the information did not charge that petitioners acted in concert with Campbell in his use of force and violence, or that petitioners promoted or aided the assemblage (the picket line) with the intention or knowledge that force or violence would be used, or anything other than that petitioners promoted and aided the assemblage at which Campbell used force and violence. The State's failure to charge petitioners with any responsibility for Campbell's use of force and violence was clearly not inadvertent, since the indictment upon which petitioners were tried the first time did charge that they by force and violence prevented Williams from working. Presumably it was lack of evidence to import to petitioners responsibility for Campbell's violence which led the prosecuting attorney to frame this new charge against petitioners for their second trial.

In contrast, the latest opinion of the Arkansas Supreme Court (discussed in detail *supra* pp. 8–9) may, and for purposes of this argument we assume that it does, read into the statute the requirement that the accused aided the assemblage with the intention that force and violence would be used to prevent a person from working.

2. To read into the statute on appeal this requirement, that petitioners must have participated in the assemblage with the intention that force and violence would be used to prevent another from working, has the result that petitioners stand convicted upon a charge which was not made against them and on which they have not been tried. For, as has been demonstrated, petitioners were not charged by the information with any such conspiracy to assemble and by force and violence prevent another from working. They were charged only with promoting an assemblage (a picket line) at which Campbell—who was alleged to have acted in concert with other persons, but not with petitioners—used force and violence to prevent a person from working.

By deliberate choice of the prosecution, petitioners were not on this trial charged with any responsibility for Campbell's violence. Now, under the State Supreme Court's perhaps deliberately ambiguous opinion, they stand convicted as though they had been charged with and tried for just that. As this

Court held the last time this case was before it, that is not due process of law. *Cole* v. *Arkansas*, 333 U.S. at 201.

3. By construing the statute (if it did) to apply to petitioners only if they planned violence, the State Supreme Court, for the second time, denied petitioners review upon the issues raised by them in the trial court and upon which they appealed.

Petitioners were convicted under a construction of the statute which made criminal their mere aiding of an assembly at which Campbell, not acting in concert with petitioners, used violence to prevent another from working. On their prior appeal, and again on remand from this Court, petitioners sought review of the question whether the statute, so construed, was constitutional.

Under the decision of this Court in this very case last year, for the State Supreme Court to deny petitioners review upon this question deprived them of due process. Yet that is exactly what the Arkansas Supreme Court did, again, if the assumption be correct that it read a requirement of "intent" into the statute. Under that assumption, it did not face the issue of the validity of the statute as construed by the trial court. Rather it gave the statute, not the construction under which petitioners had been tried, but that evidently judged necessary to help the Act's constitutionality. To do that denied review to petitioners and deprived them of procedural due process.

II.

PETITIONERS WERE UNCONSTITUTIONALLY DEPRIVED OF FREEDOM OF SPEECH AND ASSEMBLY BY THEIR CONVICTIONS UNDER A STATUTE WHICH MAKES CRIMINAL PRESENCE ON A PICKET LINE WHERE VIOLENCE IS USED TO PREVENT A PERSON FROM WORKING.

We contend that the conviction of petitioners under the Arkansas statute deprived them of freedom of speech and assembly, in violation of the due process clause of the Fourteenth Amendment. And we do not think that the soundness of that contention is at all affected by whatever interpretation the Arkansas Supreme Court may have put on the statute in its latest opinion.

1. Literally read, the statutory provision under which petitioners were tried and convicted (set out *supra* p. 2) makes it a felony for any person to "promote, encourage or aid" any assemblage at or near any place where a labor dispute exists. For, while the statutory language is "promote, encourage or aid any such unlawful assemblage," the statute contains no definition of what assemblages are "unlawful," and its most natural meaning is that an assemblage "at or near any place where a 'labor dispute' exists" is unlawful.

So read, the statute clearly violates rights of free speech and assembly which the due process clause of the Fourteenth Amendment protects from infringement by the states. *Carlson* v. *California*, 310 U.S. 106; *Thornhill* v. *Alabama*, 310 U.S. 88; *AFL* v. *Swing*, 312 U.S. 321. Those cases establish that striking laborers have a constitutional right to assemble peaceably near the plant which is struck and to express their views on the matter in controversy. Legislation which denies them that right is invalid.

2. It is true that the statute can be construed, with a small sacrifice of literalness, as making the encouragement of the assemblage felonious only if some member of the assemblage engages in violence or threats to prevent a person from working. The statute is so construed in the information, the case was tried upon that basis, and, as we have stated, there is some language in the State Supreme Court's opinion which looks to that construction. That is likewise the interpretation given the statute by the Attorney General of Arkansas in his Brief in Opposition to the Petition for Certiorari. He there states (p. 4):

> The assemblage becomes unlawful when it adopts force and violence as a means of preventing a workman from pursuing his lawful vocation or occupation. When these methods are employed, the prior lawful and peaceable assemblage becomes an *unlawful one*. [Italics in original].

If the statute be given this meaning—that is, that encouraging the assembly becomes felonious on the occurrence of the condition subsequent that any member of the assemblage resorts to violence—it is still clearly invalid under the decisions of this Court. Since the state may not directly prohibit the encouragement of the assembly, it likewise may not inhibit it, indirectly but no less effectively, by making it criminal upon the occurrence of conduct neither foreseen, participated in nor encouraged by the accused. Cf. *Terminiello* v. *Chicago*, 337 U.S. 1. The liberties guaranteed by the First and Fourteenth Amendments cannot, we submit, be denied by such indirection or circumvention. Cf. *Bailey* v. *Alabama*, 219 U.S. 219; *Grosjean* v. *American Press Co.*, 297 U.S. 233; *Murdock* v. *Pennsylvania*, 319 U.S. 105. If assemblies could be made retroactively unlawful as to all participants upon the commission of a prohibited act by any participant, freedom of assembly would be dead indeed. Cf. *DeJonge* v. *Oregon*, 299 U.S. 353. Furthermore, the imputing of criminal liability to one person for the independent acts of another is itself a deprivation of due process. "Guilt with us remains individual and personal, even as respects conspiracies. It is not a matter of mass application." *Kotteakos* v. *United States*, 328 U.S. 750, 772. Cf. *Schneiderman* v. *United States*, 320 U.S. 118, 136.

Unlike the statute before this Court in *Giboney* v. *Empire Storage and Ice Company*, 336 U. S. 490, the Arkansas statute does not make picketing for particular purposes unlawful. Rather, if violence occurs, picketing becomes retroactively a felony.

Nor can the Arkansas statute draw support from such cases as *Milk Wagon Drivers Union* v. *Meadowmoor Dairies*, 312 U.S. 287, and *Hotel & Restaurant Employees International Alliance* v. *Wisconsin Employment Relations Board*, 315 U.S. 437. To enjoin for the future picketing which is being carried on in a context of violence is one thing. To make lawful picketing retroactively criminal for all participants because of an isolated act of violence, is quite another.

In its Brief in Opposition (p. 5) the State relied heavily on *Ex Parte Frye*, 143 Texas Criminal Reports 9, 156 S.W. 2d 531; and *ex parte Sanford*, 144 Texas Criminal Reports 430, 157 S.W. 2d 899, appeal dismissed for want of a substantial federal question *sub. nom. Sanford* v. *Hill*, 316 U.S. 647. Those cases sustained the constitutionality of a Texas statute which was identical with the Arkansas statute here involved, and from which the latter was in fact copied. Those cases came up, however, on *habeas corpus* before trial, and the opinions of the Texas courts discuss only Section 1 and the first part of Section 2 of the statute, and proceed throughout upon the assumption that the accused had himself engaged in violence. The Arkansas Supreme Court itself recognized in its opinion (R. 118) that the constitutionality of the last part of Section 2 was not at issue in those cases.

3. As stated, it may be that the latest decision of the Arkansas Supreme Court, in an attempt to help the constitutionality of the statute, gives it yet a third construction, that is, that it applies only to the aiding of an assembly formed for the purpose of engaging in violence.

Such a construction cannot save the statute, for two reasons. In the first place, no such limited construction was given the jury. The jury, therefore, could have found guilt consistently with the instructions merely by finding that the defendants had encouraged the assembly, even though they had not participated in, encouraged, contemplated, or anticipated the occurrence of violence. Indeed, it convicted Bean in the same trial, and as to him the Arkansas Supreme Court itself recognized (R. 107) that the most the evidence showed was that he had been seen near the scene of the altercation. It is apparent that a statute which is invalid if taken at face value cannot be saved by a construction not submitted to the jury. *Bailey* v. *Alabama, supra*. Cf. *Screws* v. *United States*, 325 U.S. 91.

In the second place, a statute which regulates speech and assembly is judged not only by the construction which the courts may ultimately give it, but by the inhibiting effect its general words may have upon the exercise of constitutionally protected rights of speech and assembly. *Thomas* v. *Collins*, 323 U.S. 516.

In practical effect, the statute under which petitioners were convicted constitutes a device to evade, through obscurity of language and application, the constitutional protections accorded the right to picket by such cases as *Thornhill* v. *Alabama, supra* and *AFL* v. *Swing, supra*. According to the trial court, mere presence on a picket line where violence in fact occurs is a felony. According to the State Supreme Court those present on a picket line may be convicted of a felony if violence occurs and the court thereafter concludes that the picket line was assembled for the purpose of using violence. Under either construction a worker engaging in Arkansas in his constitutional right to picket is under such hazard and such danger of committing a felony that his constitutional right is rendered meaningless.

III.

PETITIONERS' CONVICTIONS WERE BASED UPON A CHARGE AND A STATUTE TOO INDEFINITE TO CONFORM TO DUE PROCESS

That the convictions were based upon a charge and a statute too vague and indefinite to conform to due process could hardly be more manifest.

The information under which petitioners were tried has in successive opinions of the Arkansas Supreme Court been held to charge a crime under Section 1 of the statute; then under the first part of Section 2; and finally under the latter part of Section 2. An information which so utterly confuses the State Supreme Court as to what crime it charges can hardly be said fairly to have informed the accused to the nature of the charges against them.

The statute itself likewise fails to meet the constitutional tests of definiteness. It has already been shown that the portion of Section 2 involved in the present case is plausibly susceptible of at least two different interpretations, and that the State Supreme Court has perhaps given it still a third interpretation. The standards of definiteness which criminal statutes must meet under the due process clause are particularly stringent in the case of statutes which, like the present, are restrictive of free speech and assembly. Vagueness in such a statute presents not only an issue of procedural due process but of restraint of freedom of speech and assembly, in violation of substantive due process. *Winters* v. *New York*, 333 U.S. 507, 509-510; *Thomas* v. *Collins*, *supra*.

CONCLUSION

The Arkansas Supreme Court has in three successive opinions refused to accord procedural due process to petitioners. The statute under which and the information by which petitioners were charged unconstitutionally restrict freedom of speech and assembly, and are too vague and indefinite to conform to due process.

It is, therefore, respectfully submitted that this case should be reversed and remanded to the Supreme Court of Arkansas, with directions that it order that the information be quashed and that no further prosecutions be instigated under the latter part of Section 2 of the Arkansas statute.

Respectfully submitted,

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SUPREME COURT OF THE UNITED STATES

RAY COLE AND LOUIS JONES .... *Petitioners*

v. [illegible] 62

STATE OF ARKANSAS .... *Respondent*

RESPONSE AND BRIEF THEREON TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ARKANSAS

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SUPREME COURT OF THE UNITED STATES

Ray Cole and Louis Jones .... *Petitioners*

v. No. 762

State of Arkansas .... *Respondent*

RESPONSE AND BRIEF THEREON TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ARKANSAS

STATUTE INVOLVED

"Sec. 2. It shall be unlawful for any person acting in concert with one or more other persons to assemble at or near any place where a 'labor dispute' exists and by *force or violence* prevent or attempt to prevent any person from engaging in any lawful vocation, or for any person acting either by himself or as a member of any group or organization, or acting in concert with one or more other persons to promote, encourage or aid *any such* unlawful assemblage." **

** Italics ours.

STATEMENT

The petitioners, Cole and Jones, together with Jesse Bean, were informed against by information (R.1). The information followed the language of Section 2 of Act 193 of the General Assembly of the State of Arkansas for 1943 charging the petitioners with a violation of the *second part* of Section 2 in that "Walter Ted Campbell, acting in concert with other persons assembled at the Southern Cotton Oil Plant where a "labor dispute" existed, by force and violence prevented Otha Williams from engaging in a lawful occupation *and* that Ray Cole, Louis Jones and Jesse Bean did unlawfully and feloniously, acting in concert with each other, promote, encourage and aid the unlawful assemblage *engaged in by Walter Ted Campbell and others.*

The information thus first alleged (as is necessary under the statute) an unlawful assemblage and, second, that the petitioners violated the second part of Section 2, Act 193, *supra*, by unlawfully aiding, promoting and encouraging such *unlawful* assemblage.

The petitioners were put to trial and the court correctly instructed the jury as to the law governing the offense for which the defendants were being tried (R.94-95). These instructions were pointed out and discussed by the Supreme Court of the United States in *Cole v. Ark.*, 333 U. S. 200-201. The Supreme Court of Arkansas affirmed the convictions in opinion of the Arkansas Supreme Court dated January 10, 1949, Law Reporter, Vol. 89, No. 8, p. 357. This petition for certiorari is from that opinion (R.115-124).

The Arkansas Supreme Court correctly holds that the essence of the offense is the *un*lawful aiding, promoting and encouraging of an unlawful assemblage, an assemblage being *un*lawful only under this Act when it prevents, by force and violence, a worker from engaging in a lawful vocation or occupation. The petitioners were convicted for this offense; i.e., promoting, aiding and encouraging the unlawful assemblage engaged in by Walter Ted Campbell and others, such assemblage being *un*lawful by reason of force and violence being used to prevent Otha Williams from engaging in his legal and lawful occupation.

REASONS FOR REFUSING THE WRIT

I

The opinion of the Supreme Court of Arkansas, delivered January 10, 1949, from which this petition stems, interprets Section 2 of Act 193, *supra*, as interpreted by this Court in the mandate and opinion in *Cole* v. *Arkansas*, 333 U. S. 196. Petitioners were tried and convicted under Section 2 of 193, *supra*, for violation of the second part of Section 2, *supra*. *Cole* v. *Arkansas*, 333 U. S. 196; *Cole and Jones* v. *State*, Law Reporter, Vol. 89, No. 8, p. 357, also delivered January 10, 1949 (R.115-124).

The Circuit Court instructed the jury under Section 2 and the second part thereof. The Supreme Court of Arkansas considered the case and interpreted the law under Section 2 and the second part thereof. The Act under which petitioners were charged, the information based thereon, and the trial court's instruction to the jury, clearly require and required that the assemblage be *un*lawful. The assemblage becomes unlawful when it adopts force and violence as a means of preventing a workman from pursuing his lawful vocation or occupation. When these methods are employed, the prior lawful and peaceable assemblage becomes an *unlawful one.* Thus, any person who encourages or aids or promotes the *creation* of an *unlawful assemblage* violates the law.

The interpretation of a state statute is a matter for the state's courts and no Federal question is here involved. *Hotel & Restaurant Employees International Alliance Local No. 22 v. Wisconsin Employment Relations Board,* 315 U. S. 437. The statute is definite in that before a violation of law can occur, the assemblage must adopt force and violence as a means of preventing lawful work. Section 2 of Act 193, *supra,* makes it unlawful for any person to act in concert with *one or more* other persons and with such "one or more other persons" to assemble and by force or violence prevent, or attempt to prevent, any person from engaging in a lawful occupation. Thus, there must be an assemblage of one or more persons. There is no prohibition in Act 193, *supra,* denying the constitutional right to assemble peaceably and to express views on the matter in controversy. *Thornhill* v. *Alabama,* 310 U. S. 88; *Carlson* v. *California,* 310 U. S. 106, and *A. F. L.* v. *Swing,* 312 U. S. 321, being clearly distinguishable in that there is no dispute in the instant case concerning the constitutional right to assemble *peaceably.* It is not disputed that a person may become an accessory to a criminal act by giving aid, encouragement and advice to the criminal who commits the crime. No constitutional question is involved. The Supreme Court of the United

States in the case of *Milk Wagon Drivers Union* v. *Meadow-Moore Dairies*, 312 U. S. 287, 86 Law Edition, 836, said:

> "Freedom of speech and freedom of the press cannot be too often invoked as basic to our scheme of society, but these liberties will not be advanced or even maintained by denying to the states with all their resources, including the instrumentality of their courts, the power to deal with coercion due to etxensive violence."

Act 193 is an exact copy of the Texas statute, Art. 1621(b) of the Texas Penal Code, as amended by Chapter 100, Acts 47th Legislature, Regular Session, Vernon's Anno. P. C. Art. 1621(b), except the Texas statute carries an emergency clause whereas Act 193 does not. The Texas Court of Criminal Appeals has sustained the constitutionality of the Texas statute in *ex parte Sanford*, 144 Criminal Reports, 430, 157 S. W. 2d 899, on the authority of *ex parte Frye*, 143 Texas Criminal Reports 9, 156 S. W. 2d 531. The *Sanford* case, *supra*, was appealed to the United States Supreme Court where it was dismissed on the ground that it did not involve a Federal question. *Sanford* v. *Hill*, 316 U. S. 647, 86 Law Edition 1731.

The official opinion of the Supreme Court of Arkansas (R.115-124) on page 122 of the Record, uses these words:

> "Appellants say that the statute prevents free assembly. We disagree with that statement. The Act prevents unlawful assemblages which cause violence and interferes with the rights of others."

The Supreme Court of the United States in the case of *Hotel and Restaurant Employees International Alliance*

Local No. 22, et al., v. *Wisconsin Employment Relations Board, et al.,* 315 U. S. 437, holds:

> "By precisely what restraints Wisconsin has imposed upon the petitioners is for the Wisconsin Supreme Court to determine. * * * That Court has, of course, the final say concerning the meaning of a Wisconsin law and the scope of administrative orders made under it. * * * The Act does not limit the right of an employee to speak freely * * * * it clearly refers to the kind of picketing which the *Thornhill* case says the state has power to deal with as part of its power to preserve the peace and protect the privacy, the lives and the property of his residence * * * as the order and the appropriate provision of the statute upon which it is based, leave the petitioners freedom of speech unimpaired, the judgment below must be affirmed."

Aiken v. *Wise,* 195 U. S. 194; *Lincoln Federal Labor Union, et al* v. *Northwestern Iron and Metal Company, et al,* 335 U. S. 525. It also held in *American Federation of Labor* v. *American Sash and Door Company,* 335 U. S. 538:

> "Legislative authority, exerted within its proper field, need not embrace all the evils within its reach. And concerning state laws, we have said that the existence of evils against which the law should afford protection and the relative need of different groups for that protection is a matter for the legislative judgment."

West Coast Hotel Company v. *Parish,* 300 U. S. 379; *Labor Board* v. *Jones and McLaughlin Corporation,* 301 U. S. 1.

Therefore, the opinion of the Supreme Court of Arkansas, interpreting Act 193, *supra*, adequately guarantees and protects petitioners freedom of speech and peaceable assembly and picketing. The petitioners were afforded every opportunity to be heard and to have such proceedings as were adequate to their rights, "due process" was not, therefore, denied the petitioners. *Anderson National Bank* v. *Luckett*, Ky. 1944, 64 S. Ct. 599, 88 Law Edition

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SUMMARY

I

The Supreme Court of Arkansas considered and affirmed petitioners' case under Section 2 of Act 193 and upon the identical questions upon which the petitioners were tried and convicted in the trial court.

II

Act 193 is a definite, valid Act aimed at a use of force and violence.

III

The Supreme Court of Arkansas construed the Act to mean only an unlawful assemblage which, by force and violence, prevents or attempts to prevent any person from engaging in a lawful vocation and that peaceable assemblages and picketing are not prohibited by the Act.

IV

There is no federal question involved and it is respectfully urged that the petition of the petitioners for Writ of Certiorari herein should be denied.

Respectfully submitted

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